

**STANDARD AGREEMENT AMENDMENT**

STD. 213 A (Rev 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages

AGREEMENT NUMBER	AMENDMENT NUMBER
<b>460000633</b>	<b>1</b>
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and Contractor named below:
 

	<small>STATE AGENCY'S NAME</small>
	<u>Department of Water Resources</u>
	<small>CONTRACTOR'S NAME</small>
	<u>U.S. Bureau of Reclamation, Department of Fish and Game, and Suisun Resource Conservation District</u>
2. The term of this Agreement is March 2, 1987 through In perpetuity
3. The maximum amount of this Agreement after this amendment is: \$In perpetuity
4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:
  1. To revise the Scope of Work to reflect significant events and changed conditions that have occurred since the original Agreement was signed. Exhibit A, Revised Suisun Marsh Preservation Agreement including attachments, are attached and made a part of this Agreement by this reference.
  2. To add Exhibit B with budget detail language. Exhibit B, Budget Detail and Payment Provisions, is attached and made a part of this Agreement by this reference.
  3. To add Exhibit C, General Terms and Conditions applicable to SRCD, which is attached and made a part of this Agreement by this reference.
  4. To add Exhibit CI, Special Terms and Conditions for the Department of Water Resources applicable to SRCD as a local public entity, which is attached and made a part of this Agreement by this reference.
  5. To add Exhibit D, General Terms and Conditions for Interagency Agreements applicable to DFG, which is attached and made a part of this Agreement by this reference.
  6. To add Exhibit D1, Special Terms and Conditions for the Department of Water Resources applicable to DFG, which is attached and made a part of this Agreement by this reference.
  7. To add Exhibit E, Special Terms and Conditions for the Department of Water Resources applicable to the U.S. Bureau of Reclamation, which is attached and made a part of this Agreement by this reference.
  8. To add Exhibit F, Standard Contract Provisions Regarding Political Reform Act Compliance, which is attached and made a part of this Agreement by this reference.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**CONTRACTOR**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

See Signature Page 33

BY (Authorized Signature)

DATE SIGNED (Do not type)

*[Handwritten mark]*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

**STATE OF CALIFORNIA**

AGENCY NAME

See Signature Page

BY (Authorized Signature)

DATE SIGNED (Do not type)

*[Handwritten mark]*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

CALIFORNIA  
Department of General Services  
Use Only

*[Handwritten signature]*

APPROVED

JUN 26 2008

DEPT OF GENERAL SERVICES

*[Handwritten signature]*

Exempt per:

**EXHIBIT A**

**REVISED SUISUN MARSH PRESERVATION AGREEMENT**

**REVISED  
SUISUN MARSH PRESERVATION AGREEMENT**

**Among**

**United States Bureau of Reclamation  
California Department of Water Resources  
California Department of Fish and Game  
Suisun Resource Conservation District**

**VERSION DATED**

**June 20, 2005**

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ATTACHMENTS

The following attachments are made a part of this Revised SMPA by reference:

- A. Description of Existing Facilities
B. Responsibility for Suisun Marsh Facilities and Activities
C. Net Delta Outflow Index and Percent Inflow Diverted
D. Sacramento Valley Water Year Hydrologic Classification
E. Original Agreement

# REVISED SUISUN MARSH PRESERVATION AGREEMENT

Among  
United States Bureau of Reclamation,  
California Department of Water Resources,  
California Department of Fish and Game, and  
Suisun Resource Conservation District

THIS REVISED SUISUN MARSH PRESERVATION AGREEMENT ("Revised SMPA") is made this [20<sup>th</sup>] day of [June], 2005, among the United States Bureau of Reclamation ("USBR"), California Department of Water Resources ("DWR"), California Department of Fish and Game ("DFG"), and the Suisun Resource Conservation District ("SRCD") (hereinafter referred to collectively as the "Parties").

On March 2, 1987, the Parties entered into the Suisun Marsh Preservation Agreement ("SMPA") which supersedes the Contract of Initial Facilities dated December 18, 1978 for the primary purpose of improving wildlife habitat on the Suisun Marsh managed wetlands. The Parties amended the SMPA by letter Amendment One, dated October 14, 1988, and letter Amendment Two, dated March 28, 1994. The SMPA and its letter amendments are referred to collectively as the "Original Agreement" of which a copy is attached to this Revised SMPA as Attachment E. For the reasons and on the terms set forth in this document, the Parties agree that the Original Agreement is hereby amended and known as the Revised SMPA and reads in its entirety as follows:

## RECITALS

- A. In Section 29002 of the Public Resources Code, the California Legislature has found and declared that the Suisun Marsh ("Marsh") represents a unique and irreplaceable resource to the people of the State and the Nation and that it is the policy of the State to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations. Further, Section 29003 of the Public Resources code provides that in order to preserve the integrity and assure continued wildlife use of the Marsh, including the preservation of its waterfowl carrying capacity and retention of the diversity of its flora and fauna, there is a need for the following:
1. Provisions for establishment and maintenance of adequate water quality.
  2. Improvement of present water management practices, including drainage and other water control facilities within the Marsh.
  3. Establishment of criteria for the production of valuable waterfowl food plants.

4. Provisions for future supplemental water supplies and related facilities to assure that adequate water quality will be achieved within the wetland areas.

These concerns have been recognized in the Plan of Protection ("Plan") developed by DWR.

- B. Public Law 99-546 authorizes the USBR to participate in the preservation of the Marsh. The value of preserving wetlands is recognized in Presidential Executive Order 11990 (Protection of Wetlands) dated May 24, 1977.
- C. A supply of adequate quality water is necessary to protect wildlife habitat in the Marsh. The Parties consider it to be in the public interest to manage the wetlands of the Marsh to produce adequate quality waterfowl habitat and grow certain waterfowl food plants.
- D. Upstream water use, including diversions by the Central Valley Project ("CVP") and the State Water Project ("SWP") has, at times, reduced outflow from the Delta, thus increasing salinity in the Marsh. The higher salinities have, at times, degraded waterfowl habitat in the Marsh. The Marsh has a salinity gradient between its western portion and its eastern portion, with ocean-derived salinity being greatest in the westerly portion.
- E. The Parties recognize that the water quality resulting from this Revised SMPA may, at times, be different than the quality of water which would be available in the Marsh in the absence of the SWP, the CVP, and other diversions by upstream users. Consequently, at times, landowners in the Marsh will need to employ more intensive management practices in the production of desirable waterfowl food plants.
- F. Resource conservation districts are authorized to enter into contracts with the United States and the State in furtherance of their powers.
- G. The SRCD is granted the primary local responsibility by Public Resources Code Section 9962 for regulating and improving water management practices on privately owned lands within the primary management area of the Marsh.
- H. The Parties recognize that the benefits and costs of implementing the Plan cannot be determined precisely. The division of responsibilities contained herein is deemed to represent a reasonable balance of equities.
- I. Article 4 of the Original Agreement requires periodic review of the effectiveness of the protective measures developed under that Agreement and a determination of whether its objectives are being achieved and if adjustments, made by amending that Agreement, are needed. In addition, Article 8(h) of the Original Agreement requires the Parties to renegotiate and amend that Agreement if either the Marsh model predictions or the Delta outflow/salinity relationships upon which that

Agreement is based are found to be substantially in error. Article 17 of the Original Agreement provides that it may be amended at any time by mutual agreement of USBR, DWR, DFG, and SRCD.

1. In November 2002, the Parties agreed to open negotiations to amend the Original Agreement based on Articles 4, 8(h), and 17 of that Agreement, and as a result of the events and changed conditions described below in Recital J.
  2. The Parties wish to amend the Original Agreement to provide measures that provide soil salinities for improved growth of forage for wildlife on managed wetlands and to meet the objectives of the Original Agreement.
- J. Since the date of the Original Agreement, the following events and changed conditions have led the Parties to this Revised SMPA:
1. In November 1988, DWR and USBR began operating the Suisun Marsh Salinity Control Gates ("SMSCG"). Evaluation of the SMSCG operation has shown that the gates can effectively reduce salinity in Montezuma Slough and the eastern regions of the Marsh, and to a lesser degree in most of the western regions of the Marsh. The SMSCG operation has proven to be more effective than was predicted.
  2. On December 15, 1994, federal and State agencies, and urban, agricultural, and environmental groups signed the "Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government" ("Principles for Agreement"), also known as the "1994 Bay-Delta Accord".
  3. In May 1995, the State Water Resources Control Board (SWRCB) adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("1995 WQCP") which incorporates many of the Principles for Agreement standards as water quality objectives for the Bay/Delta; and in July 1995, the SWRCB began the water rights hearing process for allocating responsibility for implementing the 1995 objectives.
  4. In December 1999, and as revised March 15, 2000, the SWRCB issued Water Rights Decision 1641 ("D-1641") to implement the water quality objectives in the 1995 WQCP. For protection of the Suisun Marsh, D-1641 requires DWR and USBR to report to the SWRCB by September 30 of each year on progress toward implementation of mitigation facilities and on water quality conditions in the Suisun Marsh during the previous salinity control season (D-1641, Condition 10, p. 149).

5. Construction of large scale water conveyance facilities throughout the Marsh, other than the Initial Facilities and the SMSCG, prescribed in the Original Agreement is no longer needed because:
  - a. Operation of the SMSCG has been more effective in helping to achieve the channel salinities described in Article III of this Revised SMPA than was predicted;
  - b. Implementation of the SWRCB D-1641 has significantly increased Delta outflow exceeding requirements of Decision 1485, and has resulted in lower salinity in Suisun Marsh channels than was anticipated when the Original Agreement was negotiated; and
  - c. Computer model simulations of Suisun Marsh channel salinity using the 1995 WQCP outflow objectives have shown
    - (1) Channel water salinity standards of the Original Agreement at stations C-2, S-64, S-49, S-21, and S-42 can be met with operation of the SMSCG except under rare circumstances which are provided for in Article III of this Revised SMPA.
    - (2) Channel water salinity standards of the Original Agreement near stations S-97 and S-35 can be met most of the time, with exceedences expected only in dry and critical years.
6. The CALFED Record of Decision<sup>1</sup> was released in August 2000. Following this release, CALFED requested that the SMPA agencies and the U.S. Fish and Wildlife Service (USFWS) work collaboratively to develop a "Charter" for resolving Suisun Marsh issues. The Charter was finalized and adopted in March 2001.
7. The CALFED Record of Decision identified programmatic actions for the Bay-Delta, including habitat restoration in Suisun Marsh. Specific restoration goals for the Marsh are identified in the Ecosystem Restoration Program (ERP) Plan<sup>2</sup> and include: (1) restoring tidal action to 5,000 - 7,000 acres in the Marsh and (2) enhancing 40,000 - 50,000 acres of managed seasonal wetlands. CALFED asked the Suisun Marsh Charter agencies to develop a comprehensive long-term implementation plan for meeting the ERP goals, while simultaneously meeting Suisun Marsh Charter needs for protection and enhancement of 1) pacific flyway

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1 CALFED Bay Delta Program. 2000. Programmatic Record of Decision. Department of Water Resources. Sacramento, CA 134 pp. plus appendices.

2 Ecosystem Restoration Program Plan, 1999. Ecosystem Restoration Program Plan: Volume 2 – Ecological Management Zone Visions. Draft Programmatic EIS/EIR Technical Appendix. Department of Water Resources. Sacramento, CA. 459 pp.

- and existing wildlife values in managed wetlands; 2) endangered species; 3) tidal marshes and other ecosystems; and 4) water supply quality including, but not limited to, the maintenance and improvement of levees. Completion of the Habitat, Management, Preservation and Restoration Plan for Suisun Marsh (Suisun Marsh Plan), including necessary environmental documentation, is expected to take approximately two years, subject to availability of funding.
8. In lieu of large-scale water conveyance facilities, the Parties identified interim actions and additional future actions consistent with the Original Agreement objective to improve Marsh habitat. These interim actions, described in Articles VI, VII, and VIII of this Revised SMPA, are needed to: (1) provide funding for activities which assist in re-establishing a diverse plant assemblage and return soil salinities to levels characteristic of Suisun Marsh brackish soils; (2) maintain soil salinities within natural ranges as outlined by the Soil Conservation Service (1977); (3) improve water and wildlife habitat on managed wetlands throughout the Suisun Marsh; and (4) broaden mitigation activities to emphasize management, restoration projects, and studies to mitigate for impacts of this Revised SMPA to listed and sensitive species.
  9. The Parties recognize that the actions referenced in Recital J.8 may be carried out by SRCD and DFG under the April 2000, U.S. Army Corps of Engineers Regional General Permit Number 3 (Permit File Number 24215N) obtained by SRCD and DFG pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 or as it may be subsequently amended to permit certain work activities within the Marsh.
  10. Water management plays a pivotal role in achieving soil salinity and habitat goals beneficial to waterfowl in Suisun Marsh managed wetlands, and many of the additional actions referenced in Recital J.8 are intended to assist in providing such management.
  11. Creek flows entering the northwestern Suisun Marsh affect channel water salinities in this region. State Water Project and Central Valley Project operations and other diversions upstream of Chipps Island have not affected flow or water quality patterns in creeks north and west of Suisun Marsh. However, water users in the Marsh watershed have modified creek inflows to the Marsh. For example, urbanization and land development north and west of the Marsh affect the pattern of creek inflow, sediment, and water quality entering the Marsh.
  12. Increasing Delta outflow (as measured by the Net Delta Outflow Index) above D-1641 objectives is not an effective or practical method for controlling channel water salinity in the western Suisun Marsh.
- K. SRCD intends to facilitate the formation of reclamation districts necessary to protect the facilities constructed or actions implemented pursuant to this Revised SMPA.

- L. Where rights of way are required for work to be done under this Revised SMPA, SRCD intends to facilitate acquisition by DWR and/or USBR of the necessary easements and/or other appropriate title for each facility.

NOW, THEREFORE, in consideration of the mutual obligations in this Revised SMPA, the Parties agree as follows:

## REVISED SMPA

### Article I. Definitions.

When used herein, the term:

- A. "1995 WQCP" shall mean the State Water Resources Control Board 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary adopted in May 1995.
- B. "Channel Water Salinity" shall mean salinity of water in a channel of Suisun Marsh in which a Compliance Station, Control Station, or Monitoring Station is located.
- C. "Compliance Station" shall mean a water quality compliance monitoring station listed in Table 5 of D-1641 at which the SWRCB has defined a salinity water quality standard. Data collected at these stations is used to evaluate compliance with the water quality standards. Compliance stations are listed in Table 1 and shown in Figure 1 of this Revised SMPA.
- D. "Construction Season" shall mean the period February 15 to October 15 of any year.
- E. "Control Season" shall mean the period October 1 of any year through May 31 of the following year.
- F. "Control Station" shall mean a Monitoring Station (defined below) at a location listed in Table 2 and shown in Figure 1. Salinity data from the Control Stations will be used to trigger the Drought Response Program as described in Article VII.B.4.
- G. "D-1641" shall mean the State Water Resources Control Board Water Right Decision 1641 *Implementation of Water Quality Objectives for the San Francisco Bay/Sacramento San-Joaquin Delta Estuary* adopted in December 1999 and revised on March 15, 2000.
- H. "Deficiency Period" shall mean: (1) a Critical Year following a Dry or Critical Year; or (2) a Dry Year following a year in which the Four Basin Index was less than 11.35 MAF; or (3) the second consecutive Dry Year following a Critical Year. The determination of a Deficiency Period is made using the prior year's final Water Year Type determination and a Forecast of the current year's Water Year Type; and

remains in effect until a subsequent water year is other than a Dry or Critical water year as announced by DWR and USBR as the final water year determination.

- I. "Delta" shall mean the Sacramento-San Joaquin Delta as it is presently defined in Section 12220 of the Water Code.
- J. "Electrical Conductivity" ("EC") shall mean the electrical conductivity of a water sample measured in millimhos per centimeter (mmhos/cm) corrected to a standard temperature of 25 degrees Celsius (which is the same as specific conductance expressed as milliSiemens/cm) determined in accordance with procedures set forth in the publication entitled, "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 20th Edition, 1998, including such revisions thereof as may be made subsequent to the date of this Revised SMPA which are approved in writing by the Parties.
- K. "Existing Facilities" shall mean the Initial Facilities, Suisun Marsh Salinity Control Gates ("SMSCG", also referred to as the Montezuma Slough Control Structure), Cygnus Unit, and Lower Joice Island Unit with fish screen, as described in Article VII and Attachment A. Ownership and management of Existing Facilities is specified in Attachment B.
- L. "Exterior Levees" shall mean levees which protect the Marsh against inundation and uncontrolled flooding and are identified in the "Suisun Marsh Levee Evaluation" report dated February 1983, prepared by Ramlit Associates for the U.S. Army Corps of Engineers.
- M. "Forecast" shall mean a preliminary determination of the Water Year Type made by DWR at the beginning of each February, March, April, and May and published in DWR Bulletin 120, Water Conditions in California.
- N. "Four Basin Index" or "Sacramento River Index" shall mean the sum of the unimpaired runoff in the Water Year as published in DWR Bulletin 120 for the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total unimpaired inflow to Oroville Reservoir; Yuba River at Smartville; American River, total unimpaired inflow to Folsom Reservoir.
- O. "Individual Ownership" shall mean separate, privately owned parcels of land in the Marsh, or contiguous parcels owned by the same legal entity, other than those on Roe, Ryer, Freeman, and Snag Islands or the owners thereof.
- P. "Individual Ownership Management Plan(s), also known as Individual Ownership Adaptive Management Habitat Plan(s)" shall mean the plan(s) prepared by SRCD consisting of a water, land and vegetation management program for each managed wetland in private ownership within the Marsh primary management area and

includes site specific information to enable effective and efficient management of these lands. The plans are authorized pursuant to the Suisun Marsh Preservation Act of 1977, Section 29413 of the Public Resources Code.

- Q. "Initial Facilities" shall mean the facilities for the Roaring River Slough Unit (also known as Roaring River Distribution System), the Goodyear Slough Outfall, and the Morrow Island Distribution System constructed pursuant to the contract of December 18, 1978.
- R. "Marsh" shall mean the Suisun Marsh as it is presently defined in Section 29101 of the Public Resources Code.
- S. "Marsh Model" shall mean the DWR Delta Simulation Model (Suisun Marsh Version 8A (1996)) consisting of hydrodynamic, salinity transport, and managed wetland operations. The computer model was: (1) originally developed by Hugo Fischer, Inc., as MRSHFLO and MRSHQAL under contract with USBR; (2) modified by USBR and DWR for the Original Agreement; (3) incorporated into the Fischer Delta Model (Version 7E) by Flow Science, Inc.; and (4) modified to its current version by DWR, Suisun Marsh Branch.
- T. "Monitoring Station" shall mean a water quality monitoring station necessary to collect information for stage and salinity analysis. Monitoring stations are listed in Table 3 and shown in Figure 1.
- U. "Net Delta Outflow Index" shall mean an index of net Delta outflow estimated daily by USBR and DWR, as described on page 190 of D-1641, and archived in the DWR DAYFLOW database. (See Attachment C.)
- V. "Plan of Protection" or "Plan of Protection for the Suisun Marsh" or "Plan" shall mean the plan prepared by DWR dated February 1984 in fulfillment of Condition 7 of SWRCB Decision 1485 to mitigate the effects of the CVP and SWP and other diverters upstream of Chipps Island.
- W. "Progressive Daily Mean (PDM)" shall be defined as the monthly average of both daily high-tide specific conductance values. The mathematical equation is shown below. New PDM calculations begin at the start of each calendar month.
- $$\text{PDM} = \Sigma \text{ daily average of high tide EC} / \# \text{ days of the month}$$
- X. "Water Year" or "Year" shall mean the period October 1 of any year through September 30 of the following year.

- Y. "Water Year Type" (i.e., "Wet Year", "Above Normal Year", "Below Normal Year", "Dry Year" and "Critical Year") are defined on page 188 of D-1641. (See Attachment D.)

## **Article II. Objective**

The objectives of this Revised SMPA are:

- A. To assure that USBR and DWR maintain a dependable water supply of adequate quantity and quality within the Marsh to mitigate the adverse effects on the Marsh of the CVP and SWP and a portion of the adverse effects of the other upstream diversions;
- B. To improve Marsh wildlife habitat to the extent that such improvement is compatible with other CVP and SWP purposes;
- C. To define the scope of the obligations of USBR and DWR to provide the water supply, distribution, redistribution, and management facilities; and supplemental actions necessary to accomplish the objectives in A and B; and
- D. To assure that USBR and DWR recognize that the water users within the Marsh have been diverting and will continue to divert water for wildlife habitat management within the Marsh.

## **Article III. Channel Water Salinity Standards**

- A. DWR and USBR shall meet the channel water salinity standards shown in Table 1 with operation of facilities as specified in Article VII.A. During a Deficiency Period, as described under Article I.H., the standards for "All Water Year Types" shall be replaced with the standards for "Deficiency Period" and shall only apply to S-21 and S-42. During a deficiency period, standards for C-2, S-64, and S-49 are suspended.
- B. The parties recognize that lower channel water salinity will be present at some Compliance Stations due to the salinity gradient within the Marsh
- C. During Deficiency Periods a good faith effort will be made to meet the Standards in Table 1 at the eastern Marsh stations C-2, S-64, and S-49, and the following conditions apply:
  - 1. If the Standards are not met in one or two months during a Control Season at one or more of the eastern stations, the Parties agree to waive the Standards during these months.

2. If the Standards are not met for more than 2 months during a Control Season at one or more of the eastern stations, the Parties agree to waive the Standards during these months and the Drought Response Program will be deemed triggered and funded as provided in Article VII.B.
  3. If the Standards are not met for more than 4 months in any two consecutive Control Seasons at one or more of the eastern stations, the Parties agree that the basis for this Revised SMPA is in error and will initiate discussions to amend this Agreement as provided for in Article XIV.
- D. DWR and USBR will notify DFG and SRCD in the event any standard in Table 1 is projected to be exceeded by more than 0.2 mS/cm to discuss and resolve any concerns consistent with the procedures in Article XII.A. and Article XIII.B.
- E. DWR and USBR will bear the burden of proving that their efforts to meet the Standards were made in good faith.

#### **Article IV. Review of Operations**

- A. Every fifth year after this Revised SMPA is executed the Parties will review the effectiveness of the forecasting and planning tools, operations, facilities, and actions taken pursuant to this Revised SMPA. The purpose of the review will be to determine if objectives of this Revised SMPA are being achieved and if any adjustments are needed. Information on the relationships among water salinity, soil water salinity, and plant salinity tolerance gained from the Marsh monitoring program, effectiveness of the implementation of the revised Individual Ownership Management Plans, and performance and accuracy of the Marsh Model shall be considered during the review. Results of the review will be considered to determine whether a need exists to amend this Revised SMPA to achieve the Revised SMPA objectives.
- B. Any necessary adjustments as determined by the Parties will be made by amending this Revised SMPA, the Suisun Marsh Mitigation Agreement, and/or the Suisun Marsh Monitoring Agreement.

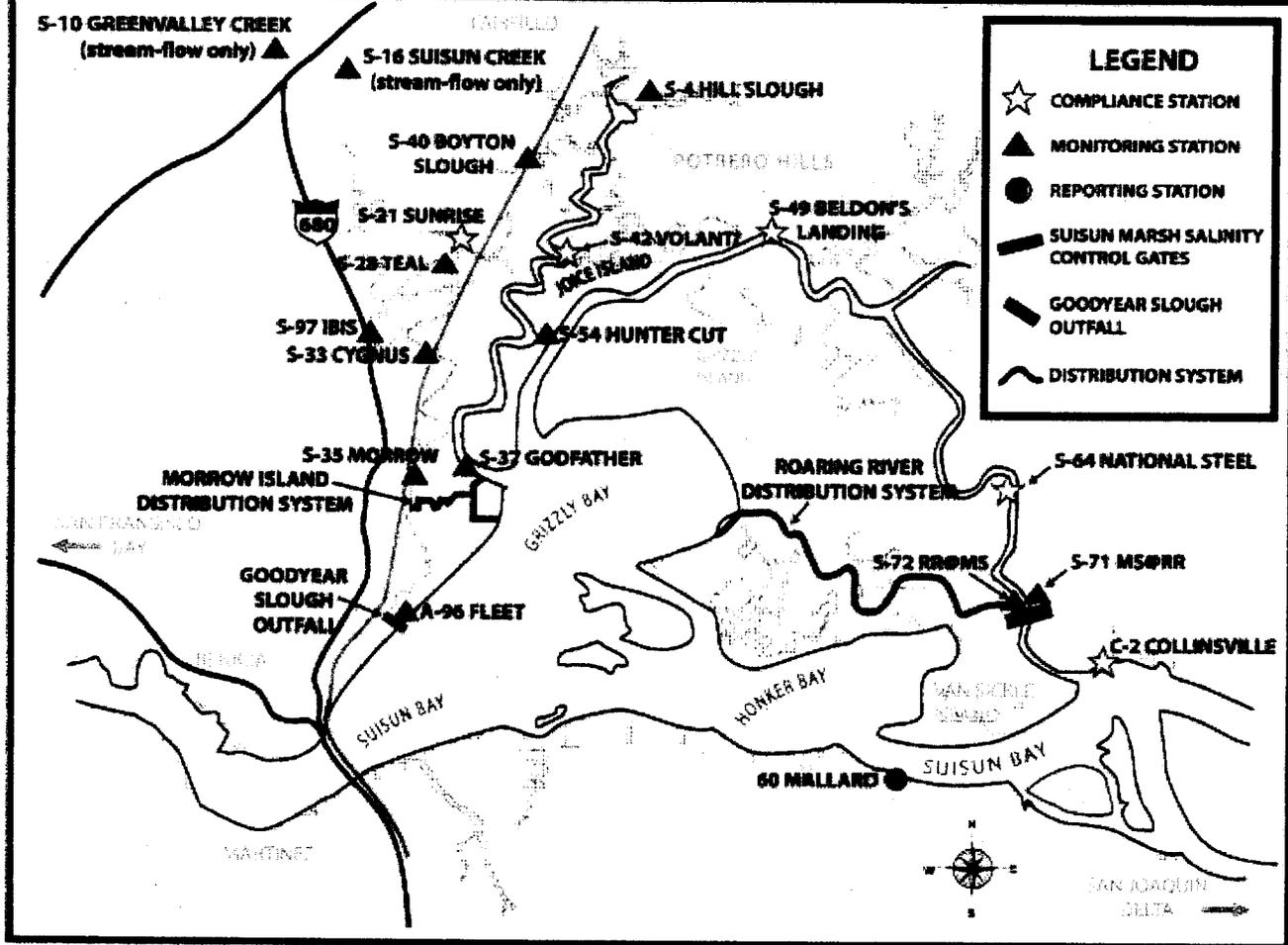
**TABLE 1. SUISUN MARSH CHANNEL WATER STANDARDS**

Compliance Location	Interagency Station Number <sup>1</sup>	Description	Time Period	Value (EC)
<b>EASTERN MARSH</b>				
Sacramento River at Collinsville	C-2 (RSAC081)	Progressive Daily Mean = mean of daily average high-tide EC of the month. See Article I.W for the mathematical equation.	<b>All Water Year Types</b>	
Montezuma Slough at National Steel	S-64 (SLMZU25)		October	19.0
Montezuma Slough near Beldon Landing	S-49 (SLMZU11)		November - December	15.5
			January	12.5
		February - March	8.0	
			April - May	11.0
<b>WESTERN MARSH</b>				
Chadbourne Slough at Sunrise Duck Club	S-21 (SLCBN1)	Progressive Daily Mean	<b>All Water Year Types</b>	
Suisun Slough, 300 feet south of Volanti Slough	S-42 (SLSUS12)		October	19.0
			November	16.5
			December	15.5
		January	12.5	
		February - March	8.0	
		April - May	11.0	
		<b>Deficiency Period<sup>2</sup></b>		
		October	19.0	
		November	16.5	
		December - March	15.6	
		April	14.0	
		May	12.5	

**TABLE 2. SUISUN MARSH CONTROL STATIONS**

Control Station Location	Interagency Station Number <sup>1</sup>	Drought Response Fund Trigger Value (PDM in mS/cm)	
Goodyear Slough at Morrow Island Clubhouse	S-35 (SLGYR003)	October	20.0
		February - March	9.0
		April - May	12.0
Cordelia Slough at Ibis Club	S-97 (SLCRD006)		

1. Parenthetical contains the River Kilometer Index station number. See Figure 1 for locations.
2. See definition of "deficiency period" in Article I.H. These Deficiency Period standards are only applicable to S-21 and S-42.



Contract No. 4600000633.1  
Figure 1

**Article V. Monitoring**

- A. The Parties to this Revised SMPA will monitor and report in accordance with the Monitoring Agreement to provide for monitoring in the Marsh dated March 2, 1987 ("Monitoring Agreement") or as it may be revised or amended. Monitoring Stations for the Suisun Marsh are listed in Table 3 "Suisun Marsh Monitoring Stations" and shown in Figure 1.
- B. The Parties shall revise or amend the Monitoring Agreement to include: monitoring of activities required by this Revised SMPA; the evaluation described in Article XV.F.; and SRCD as a participant in the Revised Monitoring Agreement and monitoring program.
- C. The monitoring program shall include stage and channel water EC monitoring at Goodyear Slough at Morrow Island Clubhouse ("S-35") and at Cordelia Slough at Ibis Club ("S-97"). The monitoring stations at S-97 and S-35 are important indicators of western Marsh salinity conditions and will be used in triggering SMSCG operation to meet standards in Table 1, as well as the Drought Response Program described in Article VII.B.

**Article VI. Mitigation**

- A. USBR, DWR, and DFG shall provide wetlands mitigation specified in the Suisun Marsh Mitigation Agreement among DWR, DFG and USBR, dated March 2, 1987, or as it may be revised or amended, and in accordance with applicable U.S. Army Corps of Engineers permits and with biological opinions required for activities in the Marsh. The measures set forth in the Revised Suisun Marsh Mitigation Agreement will provide:
  1. Multispecies habitat for the adverse impacts on wetland habitat, listed and sensitive species, and waterfowl in the Suisun Marsh resulting from implementing actions and construction required under this Revised SMPA.
  2. Multispecies habitat for any adverse effects on Roe, Ryer, Snag, and Freeman Islands resulting from upstream water diversions.
  3. Restoration of tidal wetlands and acquisition, management, and maintenance of conservation lands to achieve the goal of 2,500 acres of preferred salt marsh harvest mouse habitat.

**TABLE 3. SUISUN MARSH MONITORING STATIONS**

Monitoring Location	Interagency Station Number (River Kilometer Index)	Monitoring Parameters
Goodyear Slough at Goodyear Slough Outfall	A-96 (SLGYR008)	EC
Hill Slough at Grizzly Island Road	S-4 (SLHIL002)	Stage/EC
Green Valley Creek above Interstate 80	S-9 (SLMZS9)	Stage/Flow
Suisun Creek at Cordelia Road	S-16 (SLCSS16)	Stage/Flow
Teal Club	S-28 (SLFHN002)	EC
Cordelia Slough at Cygnus	S-33 (SLCRD003)	Stage/EC
Goodyear Slough at Morrow Island Clubhouse <sup>1</sup>	S-35 (SLGYR003)	Stage/EC
Suisun Slough at Godfather	S-37 (SLGFII011)	EC
Boynton Slough near SP tracks	S-40 (SLBOY003)	Stage/EC
Hunter Cut at Montezuma Slough	S-54 (SLMZU003)	Stage/EC
Montezuma Slough at Roaring River Distribution System	S-71 (SLMZU029)	Stage/EC/Temp.
East end of Roaring River Distribution System at Hammond Pond	S-72 (SLRAR000)	Stage/EC
Cordelia Slough at Ibis Club <sup>1</sup>	S-97 (SLCRD006)	Stage/EC

1. These stations are SWRCB baseline monitoring stations (Table 5, D-1641).

- B. The Environmental Coordination Advisory Team ("ECAT"), established under Article XII, will ensure compliance with mitigation requirements of Revised SMPA and related permits and biological opinions.
- C. The USBR and DWR shall evaluate and develop measures to mitigate impacts of the SMSCG on adult Chinook salmon passage in a manner consistent with Articles II and III of this Revised SMPA.
- D. The Parties shall revise or amend the Mitigation Agreement to include SRCD as a party thereto.

## **Article VII. Construction and Operation of Facilities and Implementation of Actions**

### **A. Construction and Operation of Existing Facilities**

1. USBR and DWR will operate the Initial Facilities and the SMSCG for the purposes of meeting the channel water salinity standards in Article III. DWR shall construct the Annie Mason Island Unit by the end of the second construction season following repairs of the Exterior Levees that are mutually agreeably by the Parties to the Revised SMPA.
2. The Initial Facilities and the SMSCG will be operated, and actions required by this Revised SMPA will be taken, to provide lower channel water salinities in the Marsh than those specified in Table 1, but only so far as such operations or actions significantly benefit wildlife habitat, do not create a need for additional upstream water releases, do not limit exports, do not harm fishery resources, and do not require that the SMSCG stoplogs remain in place beyond the time otherwise required to meet this Revised SMPA. The Coordination Committee (described in Article XII) will discuss the significance of potential impacts to fishery and wildlife resources attributed to SMSCG operations or other actions required by this Revised SMPA before any changes are made to such SMSCG operations or actions.
3. If structural impairments require repairs of the SMSCG that result in a prolonged outage such that it is inoperable and meeting provisions of Article III is not possible, the Parties agree to waive the Table 1 Standards until the month following completion of repairs. If any structural failure results in the inability to operate the SMSCG, DWR and USBR shall repair the SMSCG as quickly as reasonably possible, unless mutually agreed to by the parties to this Agreement.
4. If SMSCG operations are significantly changed by regulatory actions, making it infeasible to meet Table 1 Standards of Article III, the Parties agree that this

represents a significant project modification and will: (1) initiate discussions to amend this Revised SMPA, (2) continue operating the SMSCG to the extent possible to accomplish the purposes of this Revised SMPA, including a good faith effort to meet the Standards in Table 1, and (3) waive enforcement of Table 1 Standards during the period of Agreement renegotiation.

5. USBR and DWR shall provide funds to SRCD for realigning and stabilizing turnouts from the Roaring River Slough Unit to improve water management on Individual Ownerships and DFG lands. SRCD shall coordinate construction of improvements with DWR.
6. DWR and USBR have constructed and completed testing of a fish screen for the Lower Joice Island. This fish screen has become the property of the Individual Ownership which is responsible for operation and maintenance. DWR and USBR shall have no further responsibilities for operation and maintenance and/or for any costs associated with the fish screen.
7. Control stations S-97 and S-35 EC values will be used as water quality indicators to determine SMSCG operations to meet the water quality standards in Table 1.

#### B. Additional Actions

SRCD shall implement the following four actions, which will be funded by DWR and USBR as provided by Article VIII. The actions may be implemented concurrently and the listing below does not indicate any required order of implementation. Certain responsibilities related to the activities are further described in Attachment B.

##### 1. Water Manager Program

SRCD shall institute a Water Manager Program and employ support staff to help coordinate and improve water management practices on Individual Ownerships throughout the Marsh. The Water Manager Program shall include, but not be limited to, the following services or duties throughout the Marsh:

- a. Assist in implementation of yearly management strategies as outlined in the Individual Ownership Adaptive Management Habitat Plans ("IOAMHP") (described in Subarticle B.3) and agreed to by the landowners.
- b. Promote and encourage wetland management activities such that flooding, draining and circulation occur at the appropriate critical times of the year to produce desired wildlife habitats.
- c. Provide technical support in the field to answer questions and educate landowners on beneficial management techniques, the protection and

enhancement of endangered species habitat, management of water application, and provide new scientific information pertaining to common management activities.

- d. Supervise and coordinate the portable pump program (described in Subarticle B.2) to ensure proper maintenance and operation of the pumps.
- e. Assist landowners in planning yearly maintenance and enhancement projects.
- f. Assist landowners in completing the USACE yearly maintenance permit application.
- g. Annually update the IOAMHP (Subarticle B.3).
- h. Activities may include assisting DFG on water management of State owned property, assisting in yearly salt marsh harvest mouse monitoring, California clapper rail surveys, and inspections of levees during storms to identify damages and assist in flood fight coordination.

## 2. Portable Pumps Program

- a. SRCD shall implement this Program in coordination with the Water Manager Program. The Water Manager, under SRCD's direction, will use portable pumps provided by this Program for the benefit of Marsh managed wetlands to provide better removal of soil salts during drainage. The pumps shall be moved throughout the Marsh to provide the most benefit as determined by the Water Manager to obtain an effective leach.
- b. SRCD shall be responsible for and oversee the operation and maintenance and distribution of the portable pumps. SRCD shall be required to obtain any necessary permits and meet permit obligations for the portable pump operation. DWR, DFG, and the USBR will cooperate and support SRCD's efforts to obtain any necessary permits and meet permit obligations for the portable pump operation.
- c. SRCD shall make the pumps available for draining operations on Individual Ownerships and DFG lands, as described below:
  - (1) In those managed areas of low pond bottom elevations, portable pumps will be used to effectively remove or accelerate the drainage of high saline soil water and to facilitate the ability to flood and drain within 30 days. Most of the Marsh can tidally drain if mean pond bottom elevation (mean low low water (MLLW) at the Golden Gate) is 2.7 feet or higher. The controlling elevation becomes 3.3 feet in the northwest corner of the Marsh due to silting of the sloughs.

(2) The entire Suisun Marsh will benefit from portable pumps for drainage where: the mean pond bottom elevations of the wetlands are lower than the elevations stated above, and pumps are needed to drain and leach the property, and to drain isolated low wetlands to remove barren spots with high soil salts; the lowest tides do not have enough dwell time to permit tidal drainage; or pumping is necessary to avoid evaporative salt buildup throughout the soil profile.

(3) The pumps will not be used during times, and in the locations of, known low dissolved oxygen events, including Boynton and Peytonia Sloughs. These areas are adjacent to higher elevation wetlands, thus pumps will not be needed.

### 3. Individual Ownership Adaptive Management Habitat Plans Program

a. SRCD shall update the IOAMHP annually. These IOAMHP will provide landowners multiple management strategies, incorporate new science and management techniques, and protect and conserve brackish marsh diversity while enhancing and sustaining wildlife values within the managed wetlands. Each IOAHMP shall include the following information:

- (1) Description and location of existing facilities
- (2) Description and location of new facilities
- (3) Description and location of needed improvements
- (4) Soil classification maps
- (5) A management strategy
- (6) Vegetation Identification Booklet
- (7) Suisun Marsh facility standards
- (8) Elevation on water control facilities with relationship to tidal datum.

b. Upon completion of each IOAHMP, SRCD shall provide a copy to SMPA Parties as requested.

### 4. Drought Response Program

a. The purpose of the Drought Response Program is to compensate landowners, including DFG for lands it manages in the Marsh, who, because of drought conditions, have no alternative but to apply higher salinity channel water and, therefore, must more intensively manage these lands.

b. During any year that "drought response criteria" as described in the following Subarticle c trigger the need for drought response activities and for one additional year beyond the last year of drought response, DWR and USBR shall provide funding and payment as described in Article VIII.

- c. The following drought response criteria and allocation of funding are based on a frequency of monthly occurrence of salinity values above Table 1 standards, specifically a 40% frequency (2 out of 5 months) and 1.0 mS/cm exceedence of the Progressive Daily Mean over Table 1 values. These criteria are intended to represent probable drought impact on accumulated soil salinity.
- (1) Drought response criteria and funding shall occur in any of the following two conditions:
    - i. Deficiency Period is in effect and trigger values of Table 2 are exceeded at Monitoring Stations S-35 or S-97 when ownerships are filling from affected sloughs or channels in any two or more of the following months: October, February, March, April, or May; or,
    - ii. Deficiency Period has been in effect for more than one year and trigger values of Table 2 are exceeded at any Compliance Station from Table 1 when ownerships are filling from affected sloughs or channels in any two or more of the following months: October, February March April or May; or,
  - (2) If condition 1(i) occurs, then SRCD shall allocate all drought response funds to the western Suisun Marsh. If condition 1(ii) occurs, then SRCD shall allocate at least 75 percent of the drought response funds to the western Suisun Marsh and may allocate up to 25 percent of the drought response funds to the eastern Suisun Marsh. For purposes of this section, the western Suisun Marsh includes all lands that divert water from sloughs west of Suisun Slough, but not including Suisun Slough. SRCD shall consider recommendations and data provided by the Water Manager to determine allocation of the drought response funds to the Individual Ownerships. When the trigger values are exceeded the Water Manager may monitor channel salinity adjacent to Individual Ownership water inlet facilities to assist SRCD in determining affected lands and the need for funding.
- C. Descriptions of facilities and actions under this Article VII will be furnished to the Coordination Committee, described in Article XII, for review and comments. Comments must be provided within 30 working days of receipt of the description.
- D. USBR and DWR shall modify the Existing Facilities or their operation in accordance with Subarticle C above to provide Individual Ownerships, DFG, or SRCD the ability to achieve adequate water levels for waterfowl food production consistent with the IOAHMP within the constraints identified in Article III and/or any additional regulatory constraints.

- E. The responsibility for planning, environmental documentation, implementation, funding, operation and maintenance of facilities and actions implemented shall be as listed in Attachment B. USBR and DWR shall coordinate in funding of Attachment B responsibilities in accordance with Articles XI and XXV.

**Article VIII. Funding Amount and Payment to SRCD for SMPA Activities**

- A. For activities undertaken by SRCD pursuant to Articles VII and VIII of this Revised SMPA and any amendments, DWR and USBR shall provide funds, paid through DWR, in accordance with Articles XI and XXV, to SRCD by payment methods described in this Article:

1. DWR shall make payments to SRCD not more frequently than monthly for the actions and programs required under this Revised SMPA, following the receipt by DWR of SRCD's itemized invoice for work performed. Invoices must be identified by contract number 460000633 and appropriate Internal Order Number and addressed to:

Department of Water Resources  
Attn: Suisun Marsh Preservation Agreement Coordinator  
3251 'S' Street  
Sacramento, CA 95816

2. Where necessary, other agreements may be executed to implement the specific actions and programs required under this Revised SMPA. Such agreements shall not increase the funding available for these actions and programs unless all Parties agree to an increase and have appropriately amended this Revised SMPA. Such agreements shall provide that DWR and USBR shall make payments to SRCD as in Subarticle A.1. above and will include, where appropriate, provisions for progress payments to SRCD.
  3. DWR and USBR may take actions they deem necessary including the right to inspect installed facilities, the right to audit accounts relating to the facilities, and the right to protect their interest in case of default to verify compliance with requirements of this Article.
- B. In partial fulfillment of its mitigation requirements to SRCD, under SWRCB D-1641, for DWR and USBR operation of the SWP and CVP and effects in Suisun Marsh, DWR and USBR shall provide a one-time payment of \$218,200 to SRCD upon execution of the Revised SMPA.
1. SRCD shall use \$58,200 of this payment for start-up costs of the Water Manager and IOAHMP Programs and \$160,000 for the Portable Pumps Program, which is included as part of the maximum funding for these programs.

2. SRCD shall document and report these expenditures to DWR and USBR in the quarterly progress reports required below under Subarticle D. If SRCD uses these monies for purposes not in accordance with this subarticle, SRCD shall repay to DWR and USBR the amount expended with interest at the rate of 10 percent per annum calculated from the date payment was provided to SRCD.
- C. Maximum funding from DWR and USBR to SRCD for actions specifically described in Article VII shall be:

1. Water Manager and IOAHMP Programs:

The Water Manager and IOAHMP Programs will be funded as an annual activity conducted by SRCD. The Water Manager staffing will be phased in as landowner participation and implementation of the programs dictate.

- a. The maximum amount expended for annual operating costs each year the program continues shall not exceed \$234,190.
- b. The maximum amount expended for start-up costs shall not exceed a total of \$130,600. This includes the first-year start-up costs of \$58,200 to be paid upon execution of the Revised SMPA.
- c. DWR shall make monthly payments based on itemized invoices which will include, but are not limited to, labor, equipment, materials, travel, overhead, and costs. SRCD's estimated annual operating budget and start-up costs for these Programs are shown in Tables 4 and 5.

2. Portable Pumps Program:

- a. Except as allowed below by Subarticle C.2.b, the maximum amount expended shall not exceed \$547,757 for portable pumps, portable fuel tanks, maintenance equipment, and associated maintenance costs, including funds provided above pursuant to Subarticle B.
- b. Upon agreement of the parties, the funding shall be increased to purchase additional portable pumps.
- c. DWR shall make payments based on SRCD's itemized invoice identifying the costs of each portable pump, portable fuel tank, maintenance equipment and associated maintenance costs. The estimated cost for each pump is \$20,000.

Table 4. Annual Estimated Operating Budget for Water Manager and IOAHMP Programs <sup>1</sup>

Item	Quantity	Unit Cost (Dollars)	Extended Costs <sup>2</sup> (Dollars)
Supervisor <sup>3</sup>	One half-time	48,000	24,000
Water Manager <sup>3</sup>	Three full-time	37,000	111,000
Payroll Tax and Staff Benefits	32.6 percent		44,010
Operating Expenses			18,100
Overhead	18.8 percent		37,080
Annual Total Cost			\$234,190

1. This Budget does not include administrative start-up costs of the Water Manager and IOAHMP programs.
2. These are estimated amounts and SRCD may transfer funds among budget line items if less than or equal to 20 percent of the item total. SRCD may transfer more than 20 percent of the line item total with prior written approval of USBR and DWR.
3. Employees will be hired for duties needed to fulfill requirements of Article VII.

Table 5. Estimated Start-up Costs for Water Manager and IOAHMP Programs

Item	Quantity	Unit Cost (Dollars)	Extended Costs (Dollars)
Office Space	1	22,000	22,000
Vehicles	3	26,000	78,000
All Terrain Vehicle	3	5,500	16,500
Computer	3	1,700	5,100
Equipment and Supplies	3	1,500	4,500
Office Furniture	3	1,500	4,500
Total Cost			\$130,600 <sup>1</sup>

1. Includes \$58,200 that will be paid to SRCD upon execution of the Revised SMPA for first-year start-up costs.
2. These are estimated amounts and SRCD may transfer funds among budget line items if less than or equal to 20 percent of the item total. SRCD may transfer more than 20 percent of the line item total with prior written approval of USBR and DWR.

3. Improvements to Roaring River Slough Unit Turnouts:

- a. The maximum amount expended for this action shall not exceed \$67,164.
- b. DWR shall make payments based on SRCD's itemized invoice identifying the location and cost of each turnout improvement.

4. Drought Response Fund:

\$80,596 per year, adjusted for inflation as provided below by Subarticle F, and shared in accordance with Articles XI and XXV, shall be paid to SRCD for payment to private landowners and to DFG for drought response activities on adversely affected lands. Of the \$80,596, SRCD shall reserve \$11,194 for DFG drought response activities.

D. SRCD shall provide to DWR and USBR the following:

1. An annual budget forecast on or before January 1 for activities funded under this Revised SMPA for the upcoming State Fiscal Year (July 1 - June 30).
2. Quarterly progress reports on or before: July 1, October 1, January 1, and April 1, identifying activities undertaken pursuant to this Revised SMPA, including an accounting of costs of those activities.

E. Any real or personal property purchased by SRCD, at its expense, necessary for the actions, programs, or facilities required under Articles VII or VIII shall become the property of SRCD in consideration of SRCD meeting obligations of this Revised SMPA. SRCD shall have full responsibility for operation and maintenance of such property and DWR and USBR shall have no obligation or incur additional expenses for such property. SRCD shall hold DWR and USBR harmless for any damages, claims, or liability associated with such property.

F. Each year in July, the Annual Estimated Budget for the Water Manager and IOAHMP Program (Table 4) shall be adjusted to July 2003 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in costs using USBR's "Water Systems Operational Maintenance Cost Trends". Similarly, any unexpended funds of the Estimated Start-up Costs for the Water Manager and IOAHMP Program (Table 5) shall be adjusted to July 2003 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in costs using USBR's "Water Systems Operational Maintenance Cost Trends".

**Article IX. Public Access**

Lands owned or to be acquired in fee title by the State, which are used for the construction or maintenance of the Existing Facilities or as mitigation lands under this Revised SMPA, may be accessible to the public for recreation use. With the exception of lands under DFG ownership and management, USBR and DWR shall mutually determine after consultation with DFG and SRCD the extent to which such lands should be used for recreation consistent with safety, operational needs and potential damage to other lands.

**Article X. Rights of Way**

Delay in acquisition of rights of way that are required for work to be done under this Revised SMPA may delay completion or maintenance of a facility or implementation of an action but shall not change the responsibility of DWR and USBR to complete that facility or implement an action as expeditiously as possible.

**Article XI. DWR and USBR Cost Sharing**

- A. USBR shall pay Forty Percent (40%) and DWR shall pay Sixty Percent (60%) of the costs assigned to DWR and USBR pursuant to Articles III, IV, V, VI, VII, VIII, XII, and XXV, whether incurred prior to the date of this Revised SMPA or thereafter. The term "costs" shall include costs of planning, design, environmental documentation, construction, operation (including boat lock passage), maintenance, and mitigation. The term "costs" shall also include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR and which will be incurred by DWR in performance of the obligations under this Revised SMPA.
- B. USBR's share of design, planning, environmental documentation, mitigation and construction costs shall not exceed \$50 million, July 1985 dollars, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs, as indicated by the "Engineering News-Record's" cost indexes.
- C. The United States shall pay to DWR the costs determined to be allowable by USBR in accordance with the terms of this Revised SMPA and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 6, 48 CFR Sections 31.601-31.603. If DWR uses any funds provided pursuant to this Revised SMPA for purposes not in accordance with this Revised SMPA or not in compliance with FAR Part 31, Subpart 6, DWR shall reimburse USBR for the amount of any such improperly used funds.
- D. USBR shall submit quarterly statements to DWR for costs incurred pursuant to this Revised SMPA and, DWR shall adjust the DWR quarterly invoices to reflect USBR costs. DWR shall submit its quarterly invoices for payment to USBR for DWR costs

incurred pursuant to this Revised SMPA and adjusted for amounts reflecting USBR costs.

- E. Each year on or before October 1, DWR shall, to the extent possible, provide USBR a proposed three-year Suisun Marsh budget reflecting DWR's estimated annual costs for three years beginning one year after the date of submittal to implement programs and actions under Articles III, IV, V, VI, VII, VIII, and XII of this Revised SMPA. This estimated budget will be used by USBR to estimate future funding requirements for both operation and maintenance and construction costs associated with the Suisun Marsh programs and actions. USBR shall notify DWR by the following September 15<sup>th</sup> of its full or partial approval of DWR's proposed budget for year one, including any rationale for unapproved costs. USBR's approval shall not be unreasonably withheld. In the event that USBR does not approve DWR's year one budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually agreed upon by DWR and USBR. DWR and USBR shall coordinate on estimated budgets for years two and three as needed for their respective budget planning purposes.

#### **Article XII. SMPA Coordination Committee and ECAT**

- A. Each party to this Revised SMPA shall appoint a representative ("Coordinator") to the SMPA Coordination Committee to review and approve, as necessary, actions and operations undertaken pursuant to this Revised SMPA. To the extent possible, the Coordination Committee shall review and resolve issues and disputes that arise under this Revised SMPA as described in Article XVIII. The Committee shall convene as needed.
- B. Each party to this Revised SMPA shall appoint a representative to the SMPA Environmental Coordination Advisory Team. The ECAT will have responsibility for: (1) ensuring compliance with mitigation and monitoring requirements of this Revised SMPA and related permits and biological opinions, and (2) provide technical guidance and oversight of Suisun Marsh monitoring, management and restoration programs conducted as part of the SMPA, including its monitoring and mitigation agreements.
1. The ECAT will be patterned after DWR's Environmental Coordination Advisory Team and will include participation from other federal and State agencies, such as USFWS and NOAA Fisheries.
  2. The ECAT will report, at least annually, through the four Agency Coordinators to the Agency Directors.
  3. The ECAT's tasks will be to: (1) develop and/or update protocol for SMPA monitoring activities in cooperation with USFWS and other

regulatory agencies, and (2) develop recommendations for use of the last installment of DWR and Reclamation mitigation payments contained in the Suisun Marsh Mitigation Agreement, consistent with Article VI of this Revised SMPA, which shall include activities that mitigate for impacts to listed and sensitive species. ECAT will give high priority to mitigation actions which provide opportunities for multi-species recovery.

### **Article XIII. Assurances**

To assure the effectiveness of the actions implemented and facilities operated pursuant to Articles III, VI, and VII:

- A. SRCD shall diligently exercise its authority to require that Individual Ownerships be managed and operated in accordance with their IOAHMP and so as not to interfere with the implementation of actions and operation of Existing Facilities.
- B. DWR and USBR shall neither be required to meet:
  1. The channel water salinity standards of Article III; nor
  2. The requirements of Subarticle VII.D as it applies to the specifically affected Individual Ownershipsduring any period where the Parties agree that an Individual Ownership, by its acts or omissions, substantially interferes with the operation of any of the actions or Existing Facilities.
- C. Nothing herein shall constitute a waiver of any rights USBR and DWR may have to pursue claims of damage due to failure to maintain the Exterior Levees. If USBR and DWR are unable to meet the Article III standards because the Exterior Levees are in disrepair, USBR and DWR shall not be required to meet the standards to the extent the Exterior Levees are responsible.
- D. DWR and USBR shall make a good faith effort to repair, in an expeditious manner, any facilities or compliance or monitoring stations under DWR control that fail, in order to avoid impacts to management of Marsh wetlands.
- E. The Parties acknowledge that the actions in this Revised SMPA may not provide an equivalent level of protection to the managed wetlands as described in the Original Agreement with regard to channel water salinity objectives at S-35 and S-97. The parties agree to develop an amendment to this Revised SMPA which will contain actions that provide an equivalent or better level of protection as originally described as SMPA Amendment Three, and contained in D-1641 (pages 49-53) for the managed wetlands.

#### **Article XIV. Changes Leading to Renegotiation**

The Parties agree if any of the changes listed below occur, then they will renegotiate and amend as necessary this Agreement, consistent with these changes. This Revised SMPA may be amended for other reasons not listed below pursuant to Article XVII.

- A. A regulatory requirement that changes the configuration or operation of the SMSCG causing a significant project modification that makes meeting provisions of Article III infeasible.
- B. Future SWRCB water rights actions reduce requirements for Delta Outflow significantly from the requirements in D-1641.
- C. The salinity values at S-21 and S-42 exceed the Article III Deficiency Standards in Table 1 for more than four months in any two consecutive Control Seasons during a Deficiency Period with the SMSCG fully operating, terms and conditions for Delta outflow of the SWP and CVP water right permits being met, and with Delta outflows occurring as described by the D-1641 Outflow Objectives.
- D. Local inflow into the Marsh is significantly changed which impairs the Parties' ability to meet the objectives of this Revised SMPA.

#### **Article XV. Miscellaneous Provisions**

- A. USBR and DWR have no objection to Individual Ownerships diverting water from the Marsh channels for wildlife habitat management on lands within the Marsh. USBR and DWR shall not disturb or challenge said diversions and uses so long as they are consistent with this Revised SMPA while it is in full force and effect.
- B. SRCD and DFG shall not claim any right against USBR or DWR in conflict with the provisions hereof so long as this Revised SMPA remains in full force and effect. However, this provision shall not limit in any way DFG's authority to exercise its responsibilities as a State Trustee agency under California law, including as against USBR or DWR when applicable.
- C. This Revised SMPA shall not affect, bind, prejudice, impair, restrict, or limit water rights pertaining to lands within the Marsh.
- D. SRCD consents to the storage of water and export of water from the Delta by the CVP and SWP so long as this Revised SMPA remains in full force and effect and USBR and DWR are in compliance herewith.

- E. DWR agrees to forego the use of eminent domain proceedings to acquire water rights in the Marsh.
- F. In consideration of Chinook salmon passage issues at the SMSCG and in order to determine appropriate response to such issues and other protected species needs, the Parties agree to continue to implement tests as necessary to determine how to modify the SMSCG structure or operation to minimize fish passage impedance during SMSCG operations.
- G. DFG shall provide SRCD a mutually agreeable location within the Grizzly Island Wildlife Area, DFG headquarters compound, or other location in the Suisun Marsh to permanently place the office trailer identified in the Water Manager Program. DFG shall also provide SRCD a secure location for storage and shall provide shop access for maintenance, repairs to, and service of the pumps in the Portable Pump Program.

#### **Article XVI. Term of the Revised SMPA**

This Revised SMPA shall become effective upon execution by the Parties, and execution of the Revised Monitoring Agreement (referenced in Article V) and the Revised Mitigation Agreement (referenced in Article VI) and approval of the California Department of General Services of this Revised SMPA, the Revised Monitoring Agreement and Revised Mitigation Agreement. This Revised SMPA shall remain in full force and effect until terminated by written agreement of all the Parties.

#### **Article XVII. Amendments and Integration of Terms**

This Revised SMPA may be amended at any time by mutual written agreement of USBR, DWR, DFG and SRCD and approval by the California Department of General Services. No alterations or variation of the terms of this contract shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated in this Revised SMPA shall be binding on any of the Parties.

#### **Article XVIII. Dispute Resolution and Remedies**

- A. Disagreement among the Parties regarding performance under this Revised SMPA shall first be presented to the SMPA Coordination Committee as provided in Article XII, and if unresolved, then be brought before the agency directors and the SRCD Board of Directors for discussion and possible resolution. The Parties agree that an exceedence of a monthly salinity standard of less than 0.2 mS/cm is not sufficient as to require a remedy.

- B. As a condition precedent to a Party or Parties bringing any suit for breach of this Revised SMPA, that Party or Parties must first notify the other Party or Parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation 90 days in advance. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. The Parties involved in the dispute shall each pay an equal proportion of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Revised SMPA.
- C. Neither DWR nor USBR is responsible for the other's obligation under this Revised SMPA.
- D. The terms of Article XXIII (Release of Liability) shall be interpreted consistent with, and not supplant, the terms of this Article.

#### **Article XIX. Opinions and Determinations**

Where the terms of this Revised SMPA provide for action to be based upon the opinion, judgment, approval, review, or determination by the Parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

#### **Article XX. Successors and Assigns Obligated**

This Revised SMPA and all of its provisions shall apply to and bind the successors and assigns of the Parties hereto. No assignment is valid without the written consent of all the Parties.

#### **Article XXI. Books, Records, Reports and Inspections**

Subject to the applicable federal and State laws and regulations, each party shall have the right, for a period of three years after final payment under this Revised SMPA, to examine and make copies of each others books and official records relating to matters covered by this Revised SMPA and to request entry onto property or facilities for inspections.

**Article XXII. Waiver of Rights**

Waiver at any time by any Party hereto of its rights with respect to a default, or any other matter arising in connection with this Revised SMPA, shall not be deemed to be a waiver with respect to any other default or matter.

**Article XXIII. Release of Liability**

- A. SRCD, and its agents and employees, in the performance of this Revised SMPA, shall act in an independent capacity and not as officers or employees or agents of the State of California or the federal government.
- B. Disagreements among the Parties regarding performance under this Revised SMPA shall be governed exclusively by Article XVIII.
- C. Each Party shall be responsible for the consequences of its own actions taken in connection with this Revised SMPA, and in connection with any work undertaken in accordance with this Revised SMPA. Within thirty days of receipt by any Party to this Revised SMPA of any third party claim for liability arising from actions or omissions within the scope of this Revised SMPA, the Party receiving the claim shall notify each of the other Parties to this Revised SMPA of such claim and provide a copy of the claim to each of the other Parties to this Revised SMPA, if it is in written form. Nothing in this Article shall be construed to limit the right of any Party to this Revised SMPA to assert such affirmative defenses and file such cross-complaints as may be appropriate in relation to any claim affecting the liability of such Party to this Revised SMPA.

**Article XXIV. Notices**

All notices that are required either expressly or by implication to be given by one party to another shall be in writing and deemed to be given if delivered personally, by facsimile (FAX), or enclosed in a properly addressed postage prepaid envelope with return receipt requested and deposited in a United State Post Office or by Federal Express or equivalent delivery system. Unless or until formally notified otherwise, notices to the Parties shall be addressed as follows:

Regional Resources Manager  
U. S. Bureau of Reclamation, MP-400  
2800 Cottage Way  
Sacramento, CA 95825-1898

Regional Manager  
Department of Fish and Game  
Central Coast Region  
Yountville, CA 94599

Chief, Division of Environmental Services  
Department of Water Resources  
3251 S Street  
Sacramento, CA 95816

Executive Director  
Suisun Resource Conservation  
District  
2544 Grizzly Island Road  
Suisun, CA 94585

Chief, Central Valley Bay-Delta  
Branch  
Department of Fish and Game  
4001 North Wilson Way  
Stockton, CA 95205

#### **Article XXV. Contingent Upon Availability of Funds**

- A. Forty percent of the total funds to be paid under this Revised SMPA shall be paid using State Water Project funds and twenty percent of the total funds to be paid under this Revised SMPA are contingent on the appropriation of other State funds.
- B. The expenditure or advance of any money and the performance of any work by the United States or the State of California under this Revised SMPA which may require appropriation of money by the Congress or the State Legislature, respectfully, or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States or the State of California in case such funds are not appropriated or allotted.

#### **Article XXVI. Standard Clauses**

The Parties shall comply with the applicable standard clauses in Exhibits C, C1, D, D1, E, and F, however, where a standard clause conflicts or is inconsistent with any provision of this Revised SMPA (also referred to as Exhibit A), the provisions of this Revised SMPA shall control. And, specifically, Conditions 5 and 7 of Exhibit C shall not be applicable as these conditions are inconsistent with Articles XXIII and XVI of this Revised SMPA, respectively.

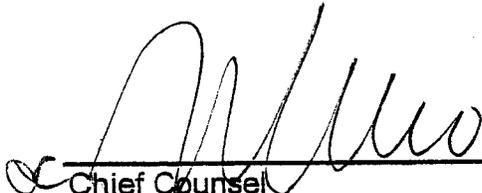
#### **Article XXVII. Counterparts**

This Agreement may be executed simultaneously or in one or more counterparts, each of which will be an original but all of which together will constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

Approved as to legal form and  
sufficiency:

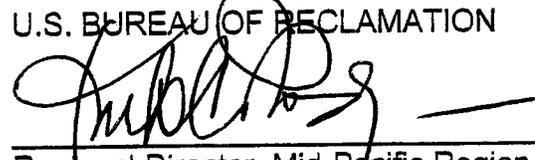
  
\_\_\_\_\_  
Office of the Regional Solicitor  
Department of the Interior

  
\_\_\_\_\_  
Chief Counsel  
Department of Water Resources

\_\_\_\_\_  
Chief Counsel  
Department of Fish and Game

\_\_\_\_\_  
Counsel  
Suisun Resource Conservation District

U.S. BUREAU OF RECLAMATION

  
\_\_\_\_\_  
Regional Director, Mid-Pacific Region

MAY 23 2005

\_\_\_\_\_  
Date

STATE OF CALIFORNIA  
DEPARTMENT OF WATER  
RESOURCES

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

DEPARTMENT OF FISH AND GAME

\_\_\_\_\_  
Director

\_\_\_\_\_  
Date

SUISUN RESOURCE CONSERVATION  
DISTRICT

\_\_\_\_\_  
President, Board of Directors,

\_\_\_\_\_  
Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

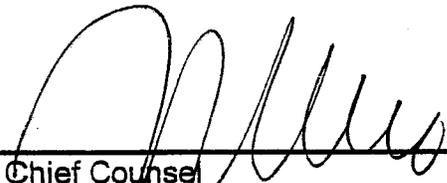
Approved as to legal form and  
sufficiency:

U.S. BUREAU OF RECLAMATION

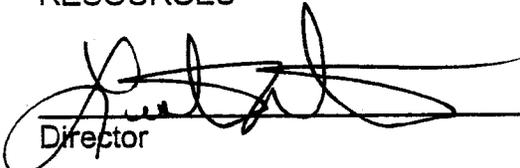
Office of the Regional Solicitor  
Department of the Interior

Regional Director, Mid-Pacific Region

Date

  
cc Chief Counsel  
Department of Water Resources

STATE OF CALIFORNIA  
DEPARTMENT OF WATER  
RESOURCES

  
Director

Date

Chief Counsel  
Department of Fish and Game

DEPARTMENT OF FISH AND GAME

  
Director

Counsel  
Suisun Resource Conservation District

May 17, 2005  
Date

SUISUN RESOURCE CONSERVATION  
DISTRICT

President, Board of Directors,

Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised SMPA (also referred to as Exhibit A) on the date first written above. The terms of this Revised SMPA together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

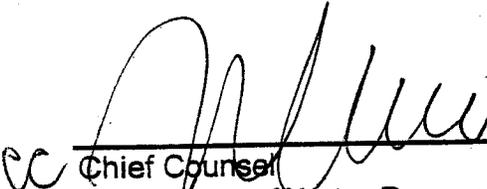
Approved as to legal form and  
sufficiency:

U.S. BUREAU OF RECLAMATION

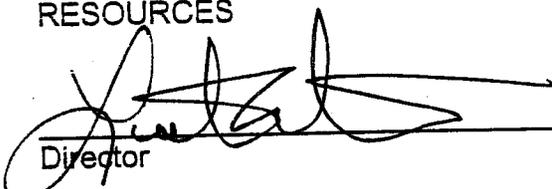
Office of the Regional Solicitor  
Department of the Interior

Regional Director, Mid-Pacific Region

Date

  
Chief Counsel  
Department of Water Resources

STATE OF CALIFORNIA  
DEPARTMENT OF WATER  
RESOURCES

  
Director

Chief Counsel  
Department of Fish and Game

Date

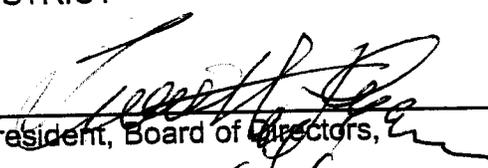
DEPARTMENT OF FISH AND GAME

  
Counsel  
Suisun Resource Conservation District

Director

Date

SUISUN RESOURCE CONSERVATION  
DISTRICT

  
President, Board of Directors,

Date

5/20/05

**Attachment A**  
**Description of Existing Facilities**

**I. Roaring River Slough Unit**

The Roaring River Slough Unit includes the following:

Intake Facilities – Fish screens, control gates, culverts, tide gates, and the levee and road over the culverts.

Hammond Island Reservoir – 40 acres in the southeast corner of Department of Fish and Game property adjacent to Montezuma Slough and Roaring River. Includes the levees surrounding the reservoir.

Roaring River Channel – Includes the north and south levees, the Mud Slough arm, including its north and south levees, and the crossing structures.

Wheeler Island – Boat ditches, levee and control gates.

Drainage Facility – Control gate and culvert.

Individual ownership water intake and discharge facilities - These facilities include control gated culverts and access thereto.

**II. Goodyear Slough Outfall**

The Goodyear Slough Outfall includes the following:

Goodyear Ditch – Channel dredged from the end of Goodyear Slough to the Bay.

Drainage Facility – Structure consisting of culverts and control gates.

Trash Rack – Structure at the beginning of Goodyear Ditch to minimize debris entering Goodyear ditch.

**III. Morrow Island Distribution System**

Intake Structure – Intake culverts, control gates, and the levee and road over the culverts.

Morrow Island Ditch – Includes the north and south levees and the crossing structures.

Drainage facility – Includes the culverts and control gates.

Individual ownership water intake and/or drainage facilities – These facilities include control gated culverts and access thereto.

**IV. Suisun Marsh Salinity Control Gates (also known as Montezuma Slough Control Structure**

The facility consists of three radial gates, a 20-foot wide boat lock, and a flashboard opening 66 feet wide.

**V. Cygnus Unit**

A drain facility consisting of a 36-inch culvert and gate on Individual Ownership No. 424.

**VI. Lower Joice Island Unit**

Fill facility consisting of a 36-inch culvert and gate and connection to the existing distribution system on Individual Ownership No. 424.

RESPONSIBILITY FOR  
 SUISUN MARSH FACILITIES AND ACTIVITIES

Item	Environmental Documentation	Design	Construction	Operation	Maintenance	Ownership
<b>Suisun Marsh Salinity Control Gates</b>						
All facilities	DWR	DWR	DWR	DWR	DWR	DWR
<b>Cygnus Unit</b>						
Turnouts	SRCD	DWR <sup>1</sup>	DWR <sup>1</sup>	Landowner	Landowner	Landowner
<b>Roaring River Slough Unit</b>						
Intake structures	DWR	DWR	DWR	DWR	DWR	DWR
Fish Screens	DWR	DWR	DWR	DWR	DWR	DWR
Modified Channel (including pond)	DWR	DWR	DWR	DWR	DWR	DWR
Levees <sup>2</sup>	DWR	DWR	DWR	—	DFG/DWR <sup>3</sup>	Landowner <sup>6</sup>
Laterals	DWR	DWR	DWR	—	DWR	DWR
Crossing structures	DWR	DWR	DWR	DWR	DWR	DWR
Turnouts	DWR	DWR <sup>1</sup>	DWR <sup>1</sup>	Landowner	Landowner <sup>4</sup>	Landowner <sup>4</sup>
Turnout (Article VII.A.5) repair	SRCD	SRCD	SRCD	Landowner	Landowner	Landowner
<b>Morrow Island Distribution System<sup>2</sup></b>						
Intake Structures	DWR	DWR	DWR	—	DWR	DWR
M-Line Outfall	DWR	DWR	DWR	DWR	DWR	DWR
C-Line Outfall	DWR	DWR	DWR	DWR	DWR	DWR
Levees	DWR	DWR	DWR	—	DWR	DWR
Turnouts and drainage facilities	DWR	DWR <sup>1</sup>	DWR <sup>1</sup>	Landowner	Landowner <sup>4</sup>	Landowner
<b>Goodyear Slough Unit</b>						
Intake structures	DWR	DWR	DWR	DWR	DWR	DWR
Outfall structure	DWR	DWR	DWR	DWR	DWR	DWR
Channel	DWR	DWR	DWR	—	DWR	DWR
<b>Lower Joice Island Unit</b>						
Turnout	SRCD	DWR	DWR	Landowner	Landowner <sup>4</sup>	Landowner
Connection to existing distribution system	SRCD	DWR	DWR	—	DWR	Landowner
Fish screen	SRCD	DWR	DWR	Landowner	Landowner <sup>5</sup>	Landowner
<b>Portable Pumps</b>						
	SRCD	SRCD	SRCD	SRCD	SRCD	SRCD
<b>Water Manager Program</b>						
All equipment	SRCD	—	—	SRCD	SRCD	SRCD

1. Specific turnouts and drain gates to be identified on design plans.
2. Main channel water control levees only.
3. DFG as landowner shall be responsible for maintaining the North Levee on Roaring River except for subsidence which prevents the River Unit from meeting its design purposes.
4. DWR and USBR shall correct any deficiency due to design or construction which prevents any water facility from passing its design flow rate until May of the third operating season after the water facility becomes operational. After this period, all necessary corrections shall be the responsibility of the Individual Ownership.
5. DWR and USBR shall correct any deficiency due to design or construction which prevents the fish screen from passing its design flow rate until May of the first operating season after the fish screen becomes operational. After this period, all necessary corrections shall be the responsibility of the Individual Ownership.
6. DWR has an easement on the levee to perform necessary maintenance.

**Attachment C**  
**NDOI and PERCENT INFLOW DIVERTED**<sup>1</sup>

The NDOI and the percent inflow diverted, as described in this footnote, shall be computed daily by the DWR and the USBR using the following formulas (all flows are in cfs):

$$NDOI = DELTA INFLOW - NET DELTA CONSUMPTIVE USE - DELTA EXPORTS$$

$$PERCENT INFLOW DIVERTED = (CCF + TPP) \div DELTA INFLOW$$

where  $DELTA INFLOW = SAC + SRTP + YOLO + EAST + MISC + SJR$

- SAC* = Sacramento River at Freeport mean daily flow for the previous day; the 25-hour tidal cycle measurements from 12:00 midnight to 1:00 a.m. may be used instead.
- SRTP* = Sacramento Regional Treatment Plant average daily discharge for the previous week.
- YOLO* = Yolo Bypass mean daily flow for the previous day, which is equal to the flows from the Sacramento Weir, Fremont Weir, Cache Creek at Rumsey, and the South Fork of Putah Creek.
- EAST* = Eastside Streams mean daily flow for the previous day from the Mokelumne River at Woodbridge, Cosumnes River at Michigan Bar, and Calaveras River at Bellota.
- MISC* = Combined mean daily flow for the previous day of Bear Creek, Dry Creek, Stockton Diverting Canal, French Camp Slough, Marsh Creek, and Morrison Creek.
- SJR* = San Joaquin River flow at Vernalis, mean daily flow for the previous day.

where  $NET DELTA CONSUMPTIVE USE = GDEPL - PREC$

- GDEPL* = Delta gross channel depletion for the previous day based on water year type using the DWR's latest Delta land use study.<sup>2</sup>
- PREC* = Real-time Delta precipitation runoff for the previous day estimated from stations within the Delta.

and where  $DELTA EXPORTS^3 = CCF + TPP + CCC + NBA$

- CCF* = Clifton Court Forebay inflow for the current day.<sup>4</sup>
- TPP* = Tracy Pumping Plant pumping for the current day.
- CCC* = Contra Costa Canal pumping for the current day.
- NBA* = North Bay Aqueduct pumping for the current day.

- 
- 1 Not all of the Delta tributary streams are gaged and telemetered. When appropriate, other methods of estimating stream flows, such as correlations with precipitation or runoff from nearby streams, may be used instead.
  - 2 The DWR is currently developing new channel depletion estimates. If these new estimates are not available, DAYFLOW channel depletion estimates shall be used.
  - 3 The term "Delta Exports" is used only to calculate the NDOI. It is not intended to distinguish among the listed diversions with respect to eligibility for protection under the area of origin provisions of the California Water Code.
  - 4 Actual Byron-Bethany Irrigation District withdrawals from Clifton Court Forebay shall be subtracted from Clifton Court Forebay inflow. (Byron-Bethany Irrigation District water use is incorporated into the GDEPL term.)

**Attachment D  
 Sacramento Valley  
 Water Year Hydrologic Classification**

Year classification shall be determined by computation of the following equation:

$$\text{INDEX} = 0.4 * X + 0.3 * Y + 0.3 * Z$$

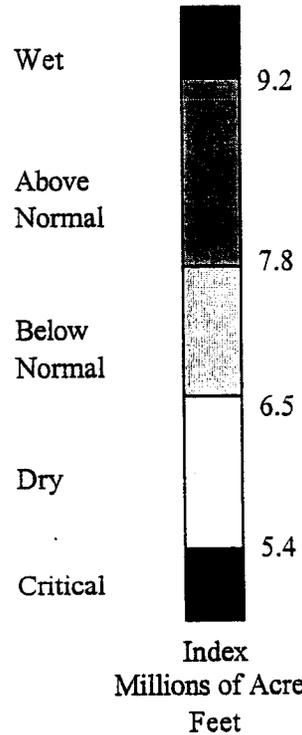
Where: X = Current year's April – July  
 Sacramento Valley unimpaired runoff

Y = Current October – March  
 Sacramento Valley unimpaired runoff

Z = Previous year's index<sup>1</sup>

The Sacramento Valley unimpaired runoff for the current water year (October 1 of the preceding calendar year through September 30 of the current calendar year), as published in California Department of Water Resources Bulletin 120, is a forecast of the sum of the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. Preliminary determinations of year classification shall be made in February, March, and April with final determination in May. These preliminary determinations shall be based on hydrologic conditions to date plus forecasts of future runoff assuming normal precipitation for the remainder of the water year.

**YEAR TYPE <sup>2</sup>**  
 All Years for All Objectives



<u>Classification</u>	<u>Index Millions of Acre-Feet (MAF)</u>
Wet.....	Equal to or greater than 9.2
Above Normal.....	Greater than 7.8 and less than 9.2
Below Normal.....	Equal to or less than 7.8 and greater than 6.5
Dry.....	Equal to or less than 6.5 and greater than 5.4
Critical.....	Equal to or less than 5.4

<sup>1</sup> A cap of 10.0 MAF is put on the previous year's index (Z) to account for required flood control reservoir releases during wet years.

<sup>2</sup> The year type for the preceding water year will remain in effect until the initial forecast of unimpaired runoff for the current water year is available.

**Attachment E. Original Suisun Marsh Preservation Agreement**

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B.	Responsibility for Suisun Marsh Plan of Protection Facilities . . . . .	B-1

SUISUN MARSH PRESERVATION AGREEMENT  
Among  
United States Bureau of Reclamation,  
California Department of Water Resources,  
California Department of Fish and Game, and  
Suisun Resource Conservation District

THIS AGREEMENT, dated this 2 day of March, 1987, is hereby entered into among the United States Bureau of Reclamation (USBR), California Department of Water Resources (DWR), the California Department of Fish and Game (DFG), and the Suisun Resource Conservation District (SRCD), and supersedes that contract for the Initial Facilities dated December 18, 1978.

R E C I T A L S

(a) In Section 29002 of the Public Resources Code, the California Legislature has found and declared that the Suisun Marsh (Marsh) represents a unique and irreplaceable resource to the people of the State and the Nation and that it is the policy of the State to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations. Further, Section 29003 of the Public Resources code provides that in order to preserve the integrity and assure continued wildlife use of the Marsh, including the preservation of its waterfowl carrying capacity and retention of the diversity of its flora and fauna, there is a need for the following:

(1) Provisions for establishment and maintenance of adequate water quality.

(2) Improvement of present water management practices, including drainage and other water control facilities within the Marsh.

(3) Establishment of criteria for the production of valuable waterfowl food plants.

(4) Provisions for future supplemental water supplies and related facilities to assure that adequate water quality will be achieved within the wetland areas.

These concerns have been recognized in the Plan of Protection (Plan) developed by DWR.

(b) Public Law 99-546 authorizes the USBR to participate in the preservation of the Marsh. The value of preserving wetlands is recognized in Presidential Executive Order 11990 (Protection of Wetlands) dated May 24, 1977.

(c) In Decision 1485 (D-1485) the State Water Resources Control Board (SWRCB) considered the problems of the Marsh and directed the USBR and DWR to develop and implement a plan to protect the Marsh. A Plan of Protection for the Suisun Marsh was furnished to the SWRCB by DWR in February 1984. D-1485 required the Plan's implementation by October 1, 1984. By letter of July 26, 1982, DWR notified SWRCB of its inability to meet that deadline. In the meantime, DWR and USBR are providing partial mitigation through certain Initial Facilities constructed pursuant to Order 7(c) of D-1485 and the contract among SRCD, DFG and DWR dated December 18, 1978. Under a contract between USBR and DWR, dated February 18, 1982, the USBR reimbursed DWR for \$2,500,000 of the federal share of the cost of the Initial Facilities, as authorized by Public Law 96-495.

(d) A supply of adequate quality water is necessary to protect wildlife habitat in the Marsh. The parties consider it to be in the public interest to manage the wetlands of the Marsh to produce adequate quality waterfowl habitat and grow certain waterfowl food plants.

(e) Upstream water use, including diversions by the Central Valley Project (CVP) and the State Water Project (SWP) has, at times, reduced outflow from the Delta, thus increasing salinity in the Marsh. The higher salinities have, at times, degraded waterfowl habitat in the Marsh. The Marsh has a salinity gradient between its western portion and its eastern portion, with ocean-derived salinity being greatest in the westerly portion.

(f) The parties recognize that the water quality provided in this Agreement may, at times, be different than the quality of water which would be available in the Marsh in the absence of the SWP, the CVP, and other diversions by upstream users. Consequently, at times, landowners in the Marsh will need to employ more intensive management practices in the production of desirable waterfowl food plants.

(g) Resource conservation districts are authorized to enter into contracts with the United States and the State in furtherance of their powers.

(h) The SRCD is granted the primary local responsibility by Public Resources Code Section 9962 for regulating and improving water management practices on privately owned lands within the primary management area of the Marsh.

(i) The parties recognize that the benefits and costs of implementing the Plan cannot be determined precisely. The division of responsibilities contained herein is deemed to represent a reasonable balance of equities.

## A G R E E M E N T

### 1. Definitions.

When used herein, the term:

(a) "Become(s) Operational" shall mean the time when a facility constructed pursuant to Article 8 is accepted by DWR with the concurrence of USBR in a formal written acceptance issued to the construction contractor.

(b) "Construction Season" shall mean the period February 1, to October 1.

(c) "Control Station" shall mean a location as listed in Table II.

(d) "Deficiency Period" shall mean (1) a Critical Year following a Dry or Critical Year; or (2) a Dry Year following a year in which the Four Basin Index was less than 11.35; or (3) the second consecutive Dry Year following a Critical Year.

(e) "Delta" shall mean the Sacramento-San Joaquin Delta as it is presently defined in Section 12220 of the Water Code;

(f) "Delta Outflow Index" shall mean an index of Delta outflow computed daily by USBR and DWR, as described on page IV-7 of the "Water Quality Control Plan, Sacramento-San Joaquin Delta and Suisun Marsh", dated August 1978, prepared by SWRCB.

(g) "Electrical Conductivity" (EC) shall mean the electrical conductivity of a water sample measured in millimhos per centimeter (mmhos/cm) corrected to a standard temperature of 25 Celsius determined in accordance with procedures set forth in the publication entitled, "Standard Methods of Examination of Water and Waste Water", published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, 13th Edition, 1971, including such revisions thereof as may be made subsequent to the date of this Agreement which are approved in writing by the parties.

(h) "Exterior Levees" shall mean levees which protect the Marsh against inundation and uncontrolled flooding and are identified in the "Suisun Marsh Levee Evaluation" report dated February, 1983, prepared by Ramlit Associates for the United States Corps of Engineers.

(i) "Four Basin Index" shall mean the sum of the unimpaired runoff in the Water Year as published in California

Department of Water Resources Bulletin 120 for the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total unimpaired inflow to Oroville Reservoir; Yuba River at Smartville; American River, total unimpaired inflow to Folsom Reservoir.

(j) "Individual Ownership" shall mean separately owned parcels of land in the Marsh, other than those on Roe, Ryer, Freeman, and Snag Islands or the owners thereof. Contiguous parcels owned by the same legal entity comprise a single Individual Ownership.

(k) "Initial Facilities" shall mean the facilities for the Roaring River Slough Unit, the Goodyear Slough Outfall, and the Morrow Island Distribution System constructed pursuant to the contract of December 18, 1978.

(l) "Marsh" shall mean the Suisun Marsh as it is presently defined in Section 29101 of the Public Resources Code.

(m) "Marsh Model" shall mean the computer model consisting of MRSHFLO and MRSHQAL originally developed by Hugo Fischer, Inc. under contract with USBR as modified by USBR and DWR.

(n) "Overall Facilities" shall mean water delivery, distribution, redistribution, intake and drainage facilities as shown in Attachment A, which is made a part of this Agreement. These facilities are described in the Plan. The Initial Facilities are a part of the Overall Facilities.

(o) "Plan of Protection" (Plan) shall mean the plan prepared by DWR dated February, 1984 to mitigate the effects of the CVP and SWP on the Marsh and any subsequent modifications.

(p) "Scheduled Water" shall mean firm supplies of the CVP or SWP, plus such additional water ordered from the SWP by a contractor the previous September which does not exceed the maximum annual entitlement of that contractor.

(q) "Water Year" or "Year" shall mean the period October 1 of any year through September 30 of the following year.

(r) "Wet Year", "Above Normal Year", "Below Normal Year" and "Subnormal Snowmelt Year" are as defined in Footnote 2 of Table II of D-1485 as adopted by the SWRCB in August 1978. "Critical Year" and "Dry Year" are also as defined in Footnote 2 of Table II of D-1485 except that runoff for the remainder of the water year shall be assumed to be equal to the lower value of the 80 percent probability range, as shown in the most recent issue of Bulletin 120, "Water Conditions in California".

2. Obj tives

The objectives of this Agreement are:

(a) To assure that USBR and DWR maintain a dependable water supply of adequate quantity and quality within the Marsh to mitigate the adverse effects on the Marsh of the CVP and SWP and a portion of the adverse effects of the other upstream diversions;

(b) To improve Marsh wildlife habitat to the extent that such improvement is compatible with other CVP and SWP purposes;

(c) To define the scope of the obligations of USBR and DWR to provide the water supply, distribution, redistribution and management facilities necessary to accomplish the objectives in (a) and (b); and

(d) To assure that USBR and DWR recognize that the water users within the Marsh have been diverting and will continue to divert water for wildlife habitat management within the Marsh.

3. Water Quality Standards

The water quality standards to be met under this Agreement are:

(a) Initial Standards;

The standards of this subarticle are to be met only until DFG and SRCD request, based on evaluation of facilities constructed pursuant to Article 8, that the standards specified in subarticles (b) and (c) be put into effect, subject to the provisions of subarticle 8(h). These are:

(i) The 28-day running average of mean daily EC at O&A Ferry Landing on Chipps Island shall not exceed 12.5 mmhos from October through May, except that the comparable EC shall be 15.6 mmhos from October through December in any calendar year when the CVP or the SWP water contractors are taking a deficiency in Scheduled Water.

(ii) The minimum mean monthly Delta Outflow Index during the period January through May shall be 6,600 cfs whenever storage is at or above the minimum level in the flood control reservation envelope at any two of the following: Shasta Reservoir, Oroville Reservoir, and CVP storage on the American River. In addition, in Above Normal and Below Normal Years, the minimum 14-day running average Delta Outflow Index will be 12,000 cfs for 60 consecutive days in the period January through April. In Wet Years the minimum mean monthly Delta Outflow Index

from February thro h May will be 10,000 cfs, except in Subnormal Snowmelt years when the period shall be February through April.

(b) Normal Standards

(i) As each facility constructed pursuant to Article 8 Becomes Operational, and after the Initial Standards are no longer in effect pursuant to (a) above, the standards in Table I shall be met, except during Deficiency Periods, at the Control Stations (Table II and Figure I) listed for each facility as follows:

<u>Facility</u>	<u>Control Stations</u>
Montezuma Slough Control Structure	C-2, S-64 and S-49
Boynton-Cordelia Unit	S-21 and S-97
Cordelia-Goodyear Unit	S-75
Grizzly Island Unit	No additional station
Potrero Hills Unit	S-42

(ii) The Initial Facilities and those facilities constructed pursuant to this Agreement will be operated to minimize water salinities in the Marsh only so far as such operations do not create a need for additional upstream water releases, do not limit exports, do not harm fishery resources, significantly benefit wildlife habitat, and do not require that the Montezuma Slough Control Structure stoplogs remain in place beyond the time otherwise required to meet this Agreement.

TABLE I-<sup>1/</sup>

MEAN MONTHLY HIGH TIDE<sup>2/</sup> ELECTRICAL CONDUCTIVITY (mmhos/cm)

<u>Month</u>	<u>Normal Standards</u>
October	19.0
November	16.5
December	15.5
January	12.5
February	8.0
March	8.0
April	11.0
May	11.0

<sup>1/</sup>The same standards apply at all Control Stations in effect, although it is recognized that better quality water will be present at some Control Stations due to a salinity gradient within the Marsh.

<sup>2/</sup>The monthly mean of both daily high tide ECs.

TABLE II  
CONTROL STATIONS

Sacramento River at Collinsville Road in Collinsville (C-2)<sup>1/</sup>  
Montezuma Slough at National Steel (three miles south of Mein's Landing) (S-64)<sup>1/</sup>  
Montezuma Slough near Beldon Landing (0.35 miles east of Grizzly Island Bridge) [S-49]<sup>2/</sup>  
Suisun Slough 300 feet south of Volanti Slough (S-42)<sup>1/</sup>  
Goodyear Slough south of proposed Goodyear Slough Control Structure [Proposed S-75]<sup>2/</sup>  
Cordelia Slough at Cordelia-Goodyear Ditch [Proposed S-97]<sup>2/</sup>  
Chadbourne Slough at Chadbourne Road [Proposed S-21]<sup>2/</sup>  
Cordelia Slough, 500 feet west of the Southern Pacific crossing at Cygnus (S-33)<sup>3/</sup>  
Goodyear Slough at the Morrow Island Clubhouse (S-35)<sup>3/</sup>

1/ D-1485 station numbers shown in parentheses.

2/ These stations will be proposed to SWRCB as substitutes for existing D-1485 Control Stations.

3/ Existing D1485 Control Station. To be replaced by alternate station unless retained as provided for in Article 8.

(c) Deficiency Standards

After the Initial Standards are no longer in effect pursuant to (a) above, Table III standards shall be substituted for Table I standards during Deficiency Periods, but other requirements of subdivision (b) above will continue in effect. The designation of a Deficiency Period shall continue until a Year is determined to be other than a Dry or Critical Year.

TABLE III<sup>1/</sup>MEAN MONTHLY HIGH TIDE<sup>2/</sup> ELECTRICAL CONDUCTIVITY (mmhos/cm)

<u>Month</u>	<u>Deficiency Standards</u>
October	19.0
November	16.5
December	15.6
January	15.6
February	15.6
March	15.6
April	14.0
May	12.5

1/ The same standards apply at all Control Stations in effect, although it is recognized that better water quality will be present at some Control Stations due to a salinity gradient within the Marsh.

2/ The monthly mean of both daily high tide EC's.

#### 4. Review of Operations

(a) Every fifth year after this Agreement is executed the parties will review the effectiveness of the facilities constructed pursuant to this Agreement. The purpose of the review will be to determine if objectives of this Agreement are being achieved and if any adjustments are needed. During the review, recognized authorities such as U. C. Extension Service and U. S. Salinity Laboratory shall be asked to comment. Information on the relationships among water salinity, soil water salinity, and plant salinity tolerance gained from the Marsh monitoring program shall be considered during the review.

(b) Any necessary adjustments will be made by amending this Agreement.

#### 5. Monitoring

DWR and DFG will monitor and report on surface water and soil water qualities, water elevations, marsh vegetation and wildlife species in accordance with the agreement among DWR, DFG, and USBR to provide for monitoring in the Marsh dated March 2, 1987 (monitoring agreement) or as it may be amended. Monitoring data will be available for inspection by SRCD.



FIGURE 1

## SUISUN MARSH

### CONTROL STATION LOCATIONS

- C-2 SACRAMENTO RIVER AT COLLINSVILLE
- S-21 CHADBOURNE SLOUGH AT CHADBOURNE ROAD
- S-33 CORDELIA SLOUGH 500 FEET WEST OF SPRR
- S-36 GOODYEAR SLOUGH AT MORROW ISLAND CLUBHOUSE
- S-42 SUISUN SLOUGH 300 FEET SOUTH OF VOLANTI SLOUGH
- S-49 MONTEZUMA SLOUGH NEAR BELDON LANDING-0.36 MILES EAST OF GRIZZLY ISLAND BRIDGE
- S-64 MONTEZUMA SLOUGH THREE MILES SOUTH OF MEN'S LANDING
- S-75 GOODYEAR SLOUGH SOUTH OF CONTROL STRUCTURE
- S-97 CORDELIA SLOUGH AT CORDELIA-GOODYEAR DITCH

NOTE: THIS MAP FOR REFERENCE ONLY.  
 THE SPECIFIC LOCATIONS ARE AS DESCRIBED IN TABLE 1 OF ARTICLE 9(b).



Figure 1

6. Mitigation

USBR and DWR shall provide wetlands mitigation in accordance with the agreement among DWR, DFG, and USBR to provide waterfowl habitat in the Suisun Marsh dated March 2, 1987 for:

(1) the impacts on wetland habitat resulting from construction required under this Agreement, and

(2) adverse effects on Roe, Ryer, Snag, and Freeman Islands resulting from upstream water diversions.

7. Individual Ownership Facilities

(a) USBR and DWR will reimburse each Individual Ownership through SRCD fifty (50) percent of the initial cost of purchasing and installing any water intake and discharge facilities, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for those water intake and discharge gates, culverts, flashboard risers, and pumps identified in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

(b) Prior to reimbursement pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later.

8. Construction and Operation of Facilities

(a) DWR shall construct the Montezuma Slough Control Structure, the Cygnus Unit, the Lower Joice Island Unit and the Annie Mason Island Unit by the end of the 1988 Construction Season provided that the work on Annie Mason Island shall not begin until the Exterior Levees of the Island are intact, which may delay completion of that unit until after 1988.

(b) When the Montezuma Slough Control Structure Becomes Operational, USBR and DWR shall test and evaluate its effectiveness in meeting the standards of subarticles 3(b) and (c), and decide which additional facilities are needed to meet those standards. Not later than three years after the Montezuma Slough Control Structure Becomes Operational:

(i) either Station S-33 will be substituted for Station S-97 in subarticle 3(b)(i) and DWR and USBR shall meet the standards in subarticle 3(b) and (c) at Stations S-21 and S-33, or DWR shall construct the Boynton-Cordelia Unit, or an alternate facility, and DWR and USBR shall meet the standards of subarticles 3(b) and (c) at Stations S-21 and S-97 not later than the end of the fifth full construction season after the Montezuma Slough Control Structure Becomes Operational; and

(ii) either DWR and USBR shall meet the standards in subarticle 3(b) and (c) at Station S-35, with that station being substituted for Station S-75 in Article 3(b)(i), or DWR shall construct the Cordelia-Goodyear Unit, or an alternate facility, and DWR and USBR shall meet the standards of subarticle 3(b) and (c) at Station S-75 not later than the end of the sixth full construction season after Montezuma Slough Control Structure Becomes Operational.

(c) USBR and DWR shall evaluate the need for the Grizzly Island Unit or an alternate facility to supply water meeting the standards of subarticles 3(b) and (c) to the area to be served by the Grizzly Island Unit. If the Grizzly Island Unit or an alternate facility is needed, DWR shall construct it in accordance with one of the following schedules:

(i) By the end of the seventh full Construction Season after the Montezuma Slough Control Structure Becomes Operational, if both the Boynton-Cordelia and Cordelia-Goodyear Units or alternate facilities are constructed; or

(ii) By the end of the sixth full Construction Season after the Montezuma Slough Control Structure Becomes Operational, if either the Boynton-Cordelia Unit or the Cordelia-Goodyear Unit or alternate facilities are not constructed.

(d) After the facility provided for in Subarticle (c) Becomes Operational or has been determined to not

be needed, USBR and DWR shall evaluate their ability to meet the standards of subarticle 3(b) and (c) at Station S-42 with the existing facilities. If USBR and DWR, based on the results of that evaluation, determine that further construction is unnecessary then they shall meet the standards in subarticles 3(b) and (c) at Control Station S-42 not later than three years from the date the facility provided for in subarticle (c) Becomes Operational or has been determined to not be needed. However, if they determine from that evaluation that the Potrero Hills Unit is needed, they shall complete construction of that unit or an alternate facility by the end of the fifth full Construction Season from the date the facility provided for in subarticle (c) Becomes Operational.

(e) Preliminary plans and specifications shall be furnished to USBR, SRCD, and DFG for review and comments. USBR and DWR shall consider the comments if received within thirty working days of the date the preliminary plans and specifications are furnished for review. Responses to comments will be provided on request of the parties. After comments and revisions have been considered, the plans and specifications shall be submitted to USBR for approval. The approval process shall be completed within 30 working days of the time DWR submits the plans to USBR for approval. All facilities shall be constructed substantially in accordance with the plans and specifications jointly approved by USBR and DWR.

SRCD, DFG, and the Individual Ownerships will incur no liability for the adequacy or suitability of any design as depicted in the preliminary plans and specifications by providing comments. Right-of-way agreements with Individual Ownerships will describe those design features which will be owned and operated by the Individual Ownership concerned.

(f) Before a facility Becomes Operational, it shall be operated to meet the applicable standards in subarticles 3(b) and (c) insofar as reasonably possible.

(g) The parties agree that if the facilities constructed pursuant to this Article do not provide the applicable water quality as specified in subarticles 3(b) and (c) due to inadequate design or construction, then USBR and DWR shall promptly modify the appropriate facility as necessary in accordance with subarticle 8(e). Pending completion of the modifications, USBR and DWR shall be relieved of the responsibility for meeting any standards dependent on the defective facility. To the extent possible, the defective facility will be operated to meet the objectives of this Agreement. Isolated minor incidents of failure to meet the applicable standards shall not be construed as requiring modification of a facility.

(h) The parties agree that if either the Marsh Model predictions or the Delta outflow/salinity relationships upon which this Agreement is based are substantially in error, they will renegotiate this Agreement. Pending renegotiation: (1) no

further facilities will be constructed; (2) the standards in effect prior to construction of the last facility will be met; and (3) the last facility will be operated to meet the standards provided for in this Agreement insofar as reasonably possible.

(i) If an Individual Ownership is unable to flood and drain within a thirty-day period due to either the design, construction, or operation of the Initial Facilities or facilities constructed pursuant to this Article, and, if the 30-day flood and drain capacity is necessary for that Individual Ownership to achieve adequate levels of waterfowl food production, as determined by DFG, then USBR and DWR shall modify the facilities or their operation as is necessary in accordance with subarticle 8(e).

(j) When the Montezuma Slough Control Structure Becomes Operational, USBR and DWR shall monitor and evaluate the quality of the water supply for Van Sickle and Chipps Island as measured at the O&A Ferry Landing on Chipps Island, or its equivalent.

DWR and USBR shall design, construct, and operate facilities, in accordance with subarticle 8(e), to provide water of the required quality, if either:

(i) the monitoring indicates that the EC of the water supply for either or both of the islands has actually exceeded the applicable standards in subarticles 3(b) and (c) for any four months in any two consecutive years, or

(ii) the evaluation projects that the EC of the water supply for either or both of the islands will exceed the applicable standards in subarticles 3(b) and (c) by more than ten percent for any four months in any two consecutive years.

If the evaluation indicates facilities will not be needed, the parties shall reassess the evaluation during each Review of Operation provided for in Article 4.

If facilities are determined to be needed, the scheduling of construction of these facilities shall be through consultation with SRCD and DFG.

(k) The responsibility for operation and maintenance of facilities shall be as listed in Attachment B which is made a part of this Agreement. DWR is shown as acting as the lead agency in Attachment B. However, USBR and DWR share responsibility for funding in accordance with Article 12.

## 9. Public Access

Lands owned or to be acquired in fee title by the State which are used for the construction or maintenance of the Overall Facilities may be accessible to the public for recreation use. With the exception of lands under DFG management, USBR and

DWR shall mutually determine after consultation with DFG and SRCD the extent to which such lands should be used for recreation consistent with safety, operational needs and potential damage to other lands.

#### 10. Rights of Way

Where rights of way are required for work to be done under this Agreement, SRCD will exercise its best efforts to assure that the necessary easements and/or other appropriate title for each facility are granted. Delay in acquisition may delay completion of a facility within the time requirements provided for in Article 8 but shall not change the responsibility to complete that facility as expeditiously as possible.

#### 11. Assurances

To assure the effective utilization of the water to be provided:

(a) SRCD shall diligently exercise its authority to require that Individual Ownerships be managed and operated in accordance with their Individual Ownership Management Programs, and so as not to interfere with the operation of the Overall Facilities.

(b) If the parties agree that an Individual Ownership by its acts or omissions interferes with the operation of any of the Overall Facilities and as a result the provisions of Article 3 cannot be met, then during the period of the Individual Ownership's interference, DWR and USBR shall neither be required to meet:

(i) the water quality standards which are affected by that interference; nor

(ii) the requirements of Subarticle 8(i) as it applies to the specifically affected Individual Ownerships.

(c) SRCD shall facilitate the formation of levee maintenance districts necessary to protect the facilities constructed pursuant to this Agreement. If USBR and DWR are unable to meet the standards because the Exterior Levees are in disrepair, USBR and DWR shall not be required to meet the standards to the extent the Exterior Levees are responsible.

(d) Nothing herein shall constitute a waiver of any rights USBR and DWR may have to pursue claims of damage due to failure to maintain the Exterior Levees.

#### 12. Cost Sharing

(a) USBR shall pay Forty Percent (40%) and DWR shall pay Sixty Percent (60%) of the costs assigned to DWR and

USBR pursuant to Articles 5, 6, 7 and 8, whether incurred prior to the date of this Agreement or thereafter. The term "costs" shall include costs of planning, design, construction, operation, maintenance, and recreation. The term "costs" shall also include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR which will be incurred by DWR in performance of the obligations under this Agreement.

(b) Specifically concerning design, planning, and construction costs, it is further agreed that USBR's share of these costs shall not exceed \$50 million, July 1985 dollars, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuation in construction costs, as indicated by the "Engineering News-Record's" cost indexes.

(c) The United States shall pay to DWR the costs determined to be allowable by the Contracting Officer in accordance with the terms of this Agreement and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 6, 48 CFR Sections 31.601-31.603. If DWR uses any funds advanced pursuant to this Agreement for purposes not in accordance with this Agreement or not in compliance with FAR Part 31, Subpart 6, DWR shall reimburse USBR for the amount of any such improperly used funds.

(i) The USBR's share of costs incurred by DWR prior to the date of this Agreement plus the interest from the dates such costs were incurred, at the State Surplus Money Investment Fund rates, shall be paid to DWR in a lump sum payment following an audit of such costs by an authorized representative of the USBR, to be completed within six months after the execution of this Agreement.

(ii) On or before the first day of each month, after the date of this Agreement, USBR shall advance its contributions specified in this Article, in accordance with a billing statement furnished by DWR regarding expenditures estimated to be incurred during the month. Adjustments for overpayments or underpayments during a quarter shall be made in the quarter immediately following. Advances will be maintained at a level commensurate with current needs.

(d) Each year on or before September 15, DWR shall furnish to USBR a proposed budget of the estimated costs by quarter to be incurred under Articles 5, 6, 7 and 8 of this Agreement during the fiscal year beginning a year later on October 1, and the respective contributions of the parties. USBR shall notify DWR by the following September 15 of its full or partial approval of DWR's proposed budget. USBR's approval shall not be unreasonably withheld. In the event that USBR does not approve all budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually

agreed upon by DWR and USBR. To facilitate USBR's review, each year's proposed budget should:

(i) include a schedule by physical feature or descriptive title of estimated operation and maintenance costs, supplemented with a narrative description which adequately describes and explains all major aspects of the fiscal year's proposed O&M program; and

(ii) include a schedule of estimated construction costs identifying major structures, facilities and related activities of the fiscal year's proposed construction program.

(e) Separate cost accounts shall be maintained by physical feature or descriptive title to permit ready audit.

### 13. Miscellaneous Provisions

(a) USBR and DWR have no objection to Individual Ownerships diverting water from the Marsh channels for wildlife habitat management on lands within the Marsh. USBR and DWR shall not disturb or challenge said diversions and uses so long as they are consistent with this Agreement while it is in full force and effect.

(b) SRCD and DFG shall not claim any right against USBR or DWR in conflict with the provisions hereof so long as this Agreement remains in full force and effect.

(c) This Agreement shall not affect, bind, prejudice, impair, restrict, or limit water rights pertaining to lands within the Marsh.

(d) SRCD consents to the storage of water and export of water from the Delta by the CVP and SWP so long as this Agreement remains in full force and effect and USBR and DWR are in compliance herewith.

(e) The parties agree to defend as reasonable and beneficial the water qualities established in this Agreement.

(f) DWR agrees to forego the use of eminent domain proceedings to acquire water rights in the Marsh.

### 14. SWRCB Approval

After this Agreement is executed by all the parties, they shall jointly petition the SWRCB to find that:

(a) DWR and USBR are taking appropriate action to mitigate the impacts of the CVP and SWP on the Marsh; and

(b) the Agreement is to be substituted for the Marsh standards in the CVP and SWP water rights permits.

15. Sharing of Water

When appropriate, the criteria identified in Article 6 of the "Agreement Between the United States and the California Department of Water Resources for the Coordinated Operation of the Federal Central Valley Project, and California State Water Project" (COA), dated November 24, 1986 shall be amended in accordance with the provisions of Article 14 of the COA to reflect the provisions of this Agreement.

16. Term of Agreement

This Agreement and any amendments hereto shall continue in full force and effect until terminated by the written agreement of all the parties.

17. Amendments

This Agreement may be amended at any time by mutual agreement of USBR, DWR, DFG and SRCD.

18. Remedies

Neither DWR nor USBR is responsible for the other's obligation under this Agreement.

19. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination by the parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

20. Successors and Assigns Obligated

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

21. Books, Records, Reports and Inspections

Subject to the applicable Federal and State laws and regulations, each party shall have the right to examine and make copies of each others books and official records relating to matters covered by this Agreement.

22. Waiver of Rights

Waiver at any time by any party hereto of its rights with respect to a default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other default or matter.

23. Notices

All notices that are required either expressly or by implication to be given by one party to another shall be deemed to be given if delivered personally, or if enclosed in a properly addressed certified postage prepaid envelope with return receipt requested deposited in a United State Post Office. Unless or until formally notified otherwise, notices to the parties shall be addressed as follows:

Regional Director,  
U. S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Director, Department of Water Resources  
P. O. Box 388  
Sacramento, CA 95802

Director, Department of Fish and Game  
1416 Ninth Street  
Sacramento, CA 95814

Manager, Suisun Resource Conservation District  
P. O. Box 426  
Suisun, CA 94585

24. Contingent Upon Availability of Funds

(a) Twenty percent of the funds to be expended for design and construction pursuant to Articles 5, 6, 7 and 8 shall be contingent on the appropriation of funds by the State Legislature for such purposes.

(b) The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

*William L. Hession*  
Regional Director, Mid-Pacific Region  
United States Bureau of Reclamation

Date 3/2/87

*David L. Jensen*  
Director, Department of Water Resources

Date: 3/2/87

*Don D. Dorell*  
Director, Department of Fish and Game

Date: 3/2/87

*D. William Poon*  
Suisun Resource Conservation District

Date: 3/2/87

I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with and this document is exempt from review by the Department of Finance.

*Guy Bennett*  
Signature

FORM	POLICY	BUDGET
Department of General Services		
APPROVED		
<i>E. Yost</i>		
AUG 7/8 1987		
By	ELIZABETH YOST Chief Deputy Director	

Approved as to legal form and sufficiency:

*S. Weber*  
Asst. Chief Counsel, Civil

AUG 10 1987 101

SEP 25 1987 151

SEP 1987

**ATTACHMENT A**



## OVERALL FACILITIES

I.

Roaring River Slough Unit (Constructed)

- A. Intake Facilities, including fish screens, control gates, culverts, tide gates, and the levee and road over the culverts.
- B. Hammond Island Reservoir, 40 acres in the southeast corner of DF&G property adjacent to Montezuma Slough and Roaring River and the levees surrounding the reservoir.
- C. Roaring River channel, including its north and south levees, the Mud Slough arm, including its north and south levees, and the crossing structures.
- D. Wheeler Island boat ditches, levee and control gates.
- E. Individual Ownership water intake and discharge facilities. These facilities include control gated culverts and access thereto.
- F. A drainage facility, consisting of a control gated culvert.

II.

Goodyear Slough Unit (Constructed)

- A. Goodyear Slough Outfall, including a structure consisting of culverts with control gates discharging to a channel dredged from Goodyear Slough to the Bay.
- B. Morrow Island Distribution System, including an intake structure consisting of a levee with control gated culverts through it, a ditch with levees on both sides, outlet structures consisting of levees with control gated culverts through them and access thereto.
- C. Individual Ownership water intake facilities. These facilities include control gated culverts and access thereto.
- D. The drainage facilities from the certain Individual Ownerships. These facilities include control gated culverts and access thereto.
- E. The pond levee with flow controlled culverts north of Morrow Island Ditch.

III.

Montezuma Slough Control Structure

A. Three radial gates, a boat lock 20 feet wide, and a flashboard opening 66 feet wide.

IV.

Grizzly Island Unit

A. Intake Facilities, including fish screens, control gates, culverts, tide gates and the levee and road over the culverts.

B. Reservoir, 120 acres regulating reservoir.

C. Grizzly Island channel, including its north and south levees.

D. Lateral water supply ditches, including their east and west levees.

E. Individual Ownership water intake and discharge facilities. These facilities include control gated culvert(s) and access thereto.

V.

Potrero Hills Unit

A. Intake and outlet facilities, including control gates, culverts, the levee and road over the culverts.

B. Potrero Hills channel, including its north and south levees and the crossing structures.

C. Ponds, two 15 acre ponds.

D. Necessary dredging in Luco and Hill Sloughs.

VI.

Cordelia-Goodyear Unit Ditch

A. Intake and outlet facilities, including control structures, control gates, culverts, tide gates, and the levees and road over the culverts.

B. Cordelia-Goodyear channel, including its east and west levees and crossing structures.

C. Pond, one 20 acre pond.

D. Provision to handle storm runoff from the existing highway culverts.

E. Individual Ownership intake and discharge facilities. These facilities include control gated culvert(s) and access thereto.

F. Goodyear Slough Control Structure, including control gates and the levee and road over structure.

VII. Cygnus Unit

A. Drain facility consisting of 36-inch culvert, gate and flashboard riser on Individual Ownership No. 415.

VIII. Boynton-Cordelia Ditch Unit

A. Intake and outlet facilities, connection from Fairfield Suisun Sanitary District treatment plant.

B. Boynton Cordelia channel, including north and south levees, Chadbourne Road crossing structure and two siphons.

C. Necessary dredging in Boynton Slough relocation of Reclamation Ditch, provision of facility to handle sheet runoff.

IX. Lower Joice Island Unit

A. Fill facility consisting of 36-inch culvert and gate on Individual Ownership No. 424.

B. Connection to existing distribution system on Individual Ownership No. 424.

X. Annie Mason Island Unit

A. Installation of a diesel powered pump on Individual Ownership No. 801.

B. Connection to existing distribution system on Individual Ownership No. 801.

XI. Van Sickle/Chipps Island Unit (to be constructed when and if needed).

XII. Individual Ownership Facilities

A. Individual Ownership water management facilities as provided for in Article 7 of the Agreement.

**ATTACHEMENT B**

RESPONSIBILITY FOR  
SUISUN MARSH PLAN OF PROTECTION FACILITIES

<u>Item</u>	<u>Design</u>	<u>Construction</u>	<u>Operate</u>	<u>Maintain</u>
<u>Montezuma Slough</u>				
<u>Control Structure</u>				
All facilities	DWR	DWR	DWR	DWR
<u>Grizzly Island Unit</u>				
Intake structure	DWR	DWR	DWR	DWR
Fish screens	DWR	DWR	DWR	DWR
Ditch (including pond)	DWR	DWR	--	DWR
Laterals	DWR	DWR	--	DWR
Levees <u>2/</u>	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Potrero Hills Unit</u>				
Intake and outlet structures including dredging in Luco and Hill Sloughs	DWR	DWR	DWR	DWR
Ditch	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
<u>Cordelia-Goodyear Unit</u>				
Intake and outlet structures	DWR	DWR	DWR	DWR
Ditch (including ponds)	DWR	DWR	--	DWR
Laterals	DWR	DWR	--	DWR
Levees	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR/County <u>6/</u>
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
Goodyear Slough				
Control Structure	DWR	DWR	DWR	DWR
<u>Boynton-Cordelia Unit <u>5/</u></u>				
Intake and outlet structures	DWR	DWR	DWR	DWR
Ditch	DWR	DWR	--	DWR
Levees	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	--	DWR

<u>Item</u>	<u>Design</u>	<u>Construction</u>	<u>Operate</u>	<u>Maintain</u>
<u>Cygnus Unit</u> Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner
<u>Roaring River Unit</u> Intake structures	DWR	DWR	DWR	DWR
Fish screens	DWR	DWR	DWR	DWR
Modified Channel (including pond)				
Levees <u>2/</u>	DWR	DWR	--	DFG/DWR <u>3/</u>
Laterals	DWR	DWR	--	DWR
Crossing structures	DWR	DWR	DWR	DWR
Turnouts	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Goodyear Slough Unit</u> Intake structure	DWR	DWR	DWR	DWR
Outfall structure	DWR	DWR	DWR	DWR
Channel	DWR	DWR	--	DWR
Morrow Island Dis- tribution System <u>2/</u>	DWR	DWR	--	DWR
Turnouts and drainage facilities	DWR <u>1/</u>	DWR <u>1/</u>	Landowner	Landowner <u>4/</u>
<u>Lower Joice Island Unit</u> Turnout	DWR	DWR	Landowner	Landowner <u>4/</u>
Connection to the existing distri- bution system	DWR	DWR	--	DWR
<u>Annie Mason Island Unit</u> Pump	DWR	DWR	Landowner	DWR
Connection to the existing distri- bution system	DWR	DWR	--	DWR
<u>Van Sickle/Chipps Island Unit</u>	To be determined if constructed			

- 1/ Specific turnout and drain gates to be identified on design plans.
- 2/ Main channel water control levees only.
- 3/ DFG shall be responsible for maintaining the North Levee on Roaring River except for subsidence which prevents the Roaring River Unit from meeting its design purposes.
- 4/ DWR and USBR shall correct any deficiency due to design or construction which prevents any water facility from passing its design flow rate until May of the third operating season after the water facility becomes operational. After this period, all necessary corrections shall be the responsibility of the landowner of the Individual Ownership.
- 5/ An outfall is to be constructed to the Boynton-Cordelia pond from its treatment plant by Fairfield-Suisun Sanitary District (FSSD) at its expense.
- 6/ To be determined by separate agreement.

RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SUISUN RESOURCE CONSERVATION DISTRICT

WHEREAS, the Suisun Resource Conservation District (District) has participated in negotiations which have led to a contractual agreement among the District, the State Departments of Fish and Game and Water Resources, and the U.S. Bureau of Reclamation; and

WHEREAS, the overall goal of this agreement is to provide improved water quality and wildlife habitat in the Suisun Marsh; and

WHEREAS, Dr. William Coon, past President of the District, has been instrumental in seeking ways to achieve this goal since the inception of the District in 1963;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Suisun Resource Conservation District authorizes Dr. William Coon to sign the four agency contract on behalf of the District.

The foregoing resolution was passed unanimously by the Board of Directors of the Suisun Resource Conservation District this 5th day of November, 1986. Effective November 5, 1986.

  
\_\_\_\_\_  
Gail Presley, Secretary

**CONTRACT TRANSMITTAL AND PRE-EVALUATION**  
 STD 15 (REV. 2/86)

DEPARTMENT TRANSMITTING CONTRACT  
 Water Resources  
 DIVISION, BUREAU, OR OTHER UNIT  
 Central District  
 DATE 3/2/87  
 CONTRACT NUMBER B-56323

AGENCY BILLING CODE 81000

ITEMS 1 THROUGH 11 ON THE FRONT SIDE OF THIS FORM MUST BE COMPLETED FOR EVERY CONTRACT, REGARDLESS OF CONTRACT AMOUNT. WHETHER THE CONTRACT MUST BE SUBMITTED TO THE DEPARTMENT OF GENERAL SERVICES FOR REVIEW. IN ADDITION, ITEMS 1 THROUGH 6 ON THE REVERSE SIDE MUST BE COMPLETED FOR ALL CONTRACTS FOR SERVICES. A COPY OF THE COMPLETED FORM MUST ACCOMPANY EACH CONTRACT SUBMITTED TO GENERAL SERVICES FOR REVIEW. A COPY OF THE COMPLETED FORM MUST BE RETAINED IN AGENCY FILES FOR 3 YEARS FROM DATE CONTRACT WAS EXECUTED.

1. NAME OF CONTRACTOR  
 U.S. Bureau of Reclamation, Department of Fish and Game, Department of Water Resources, Suisun Resource Conservation District

2. CONTRACTOR I.D. NUMBER (IF REQUIRED BY S.A.M. SECTION 1248)  
 NA

3. DIGEST OF CONTRACT (WORK TO BE PERFORMED, AMOUNT TO BE PAID, TERM). INCLUDE ANY SPECIAL OR UNUSUAL TERMS AND CONDITIONS  
 See Attached

4. REASON FOR CONTRACT (IDENTIFY SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, PROGRAM NEED OR OTHER CIRCUMSTANCE MAKING THE CONTRACT NECESSARY)  
 To assure that a dependable water supply is maintained to mitigate adverse effects on the Marsh of the Central Valley Project and State Water Project and a portion of the adverse effects of other upstream diversions. Also see B-56321 and B-56322

5. IS THIS A RENEWAL OF A PREVIOUS CONTRACT OR SERVICE? YES  NO

6. SUMMARY OF BIDS: A. LIST BIDDERS AND AMOUNTS BID  
 B. EXPLAIN:  
 1. AWARD OF CONTRACT IF TO OTHER THAN LOW BIDDER NA Interagency Agreement  
 2. IF SOLE SOURCE WHAT IS JUSTIFICATION?  
 3. IF ONLY ONE BID WAS RECEIVED OR SOLE SOURCE, BASIS FOR CONCLUDING REASONABLENESS OF CONTRACT RATE OR PRICE

Work Order No.: 1382-Var-6503; Randy Brown  
 1382-Var-6502; Carol Nelson  
 4126-Var )  
 6220-Var ) Frank Lombard  
 5760-Var )  
 7425 )  
 7423 ) Mike Cunnagin  
 7564 )

*NO monies per [unclear]  
 per [unclear] order  
 Interagency Agreement*

Project Manager: George Barnes

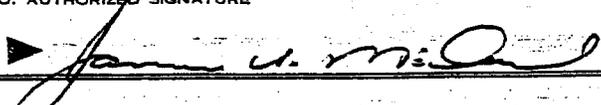
ETHNIC CODES:	MALE	FEMALE	MALE	F
BLACK AMERICANS	1	A	AMERICAN INDIANS/ALASKAN NATIVES	7
ASIAN-PACIFIC AMERICANS	2	B	FILIPINO AMERICANS	8
HISPANIC AMERICANS	4	D	ASIAN-INDIAN AMERICANS	9
PACIFIC ISLANDERS	6	F	CAUCASIAN/WHITE	5

(FOR ASSISTANCE WITH ITEMS 7 AND 8 BELOW, CALL THE OFFICE OF SMALL AND MINORITY BUSINESS IN THE DEPARTMENT OF GENERAL SERVICES.)

7. ENTER ETHNICITY OF CONTRACTOR FROM LIST ABOVE AS DEFINED IN S.A.M. SECTION 1204.4 NA

8. WAS THIS CONTRACT AWARDED TO A SMALL BUSINESS AS DEFINED IN S.A.M. SECTION 1204.17  YES  NO  NA

9. FOR CONTRACTS IN EXCESS OF \$5,000 HAS THE LETTING OF THIS CONTRACT BEEN REPORTED TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PURSUANT TO S.A.M. SECTION 1212.117  YES  NO  NA

10. AUTHORIZED SIGNATURE  


11. NAME AND TITLE  
 James U. McDaniel, Chief, Central District

PRE-EVALUATION SECTION—MUST BE COMPLETED WHEN REQUESTING APPROVAL OF ANY CONTRACT FOR SERVICE

1. JUSTIFICATION FOR CONTRACT (CHECK ONE)

- THIS CONTRACT IS TO BE EXECUTED TO ACHIEVE COST SAVINGS PURSUANT TO S.A.M. SECTION 1230.1. THE STATE PERSONNEL BOARD HAS BEEN SO NOTIFIED
- THIS CONTRACT IS TO BE EXECUTED PURSUANT TO CIVIL SERVICE CONSIDERATIONS CONTAINED IN S.A.M. SECTION 1230.2. JUSTIFICATION FOR THE CONTRACT IS DESCRIBED BELOW

NA

2. DESCRIBE THE SERVICE OR FINAL PRODUCT WHICH WILL RESULT, ITS BENEFIT AND THE ESTIMATED NUMBER OF PERSONS SERVED BY SUCH SERVICE

NA

3. HOW WILL THE AGENCY USE THE CONTRACT PRODUCT? HOW WILL ITS USE BENEFIT THE AGENCY'S PROGRAM?

NA

4. WHY IS CONTRACTING THE MOST EFFECTIVE METHOD OF ACHIEVING THE AGENCY'S PURPOSE?

NA

5. WHAT BIDDING METHOD WAS USED TO SELECT THE VENDOR?

- REQUEST FOR PROPOSAL     INVITATION FOR BID     OTHER, EXPLAIN—USE ATTACHMENTS IF NECESSARY NA

PROOF OF PUBLICATION IN THE STATE CONTRACTS REGISTER MUST BE ATTACHED. IF SUCH PROOF IS NOT AVAILABLE, A REQUEST FOR EXEMPTION CONTRACT ADVERTISING, STD. FORM 821 MUST BE ATTACHED. (SEE S.A.M. SECTION 1212.6)

6. DOCUMENT EFFORTS MADE TO DETERMINE WHY PERSONNEL IN YOUR AGENCY OR IN OTHER STATE AGENCIES CANNOT PROVIDE THIS WORK. LIST WHICH SERVICE CLASSES WERE CONSIDERED, NAMES OF AGENCIES CONTACTED, AND EXPLAIN WHY THEY CANNOT PROVIDE THE REQUESTED SERVICES.

NA

7. HAVE ALL REQUIREMENTS GOVERNING THE USE OF CURRENT AND FORMER STATE EMPLOYEES AS SPECIFIED IN S.A.M. SECTION 1248 BEEN COMPLIED WITH?

- YES     NO    NA

3. DWR and DFG will monitor in the Marsh in accordance with the Suisun Marsh Monitoring Agreement. USBR and DWR will provide wetlands mitigation in the Marsh in accordance with the Suisun Marsh Mitigation Agreement. USBR and DWR will reimburse Individual Ownerships through SRCD, 50% of the initial cost of individual ownership facilities in accordance with Article 7 of the Agreement. DWR will construct and operate facilities in the Marsh in accordance with Article 8 of the Agreement.

Agreement amount - Article 12(a) requires the USBR to pay 40% of the costs incurred by DWR (including costs of planning, design, construction, operation, maintenance, and recreation prior to the Agreement) for monitoring, mitigation, individual ownership facilities, and Suisun Marsh facilities. Article 12(b) requires that the USBR's share of the design, planning, and construction costs not exceed \$50 million. Total cost unknown at this time.

Agreement term - until terminated by the written agreement of all parties.

OCT 14 1988

David G. Houston, Regional Director  
Mid-Pacific Region  
Bureau of Reclamation  
U. S. Department of the Interior  
2800 Cottage Way, Room W1105  
Sacramento, CA. 95825-1898

Peter F. Bontadelli, Director  
Department of Fish and Game  
1416 Ninth Street  
Sacramento, CA 95814

Leland C. Lehman, President  
Suisun Resource Conservation District  
P. O. Box 426  
Suisun City, CA. 94585

Gentlemen:

This letter is to request your concurrence with the amendment of Table II and Subarticle 8(a) of the Suisun Marsh Preservation Agreement in accordance with Article 17 of that Agreement.

The Suisun Marsh Salinity Control Gates will be operable in October 1988 as required by Article 8(a) of the Agreement. A plan for testing and evaluating the effectiveness of the Control Gates is currently being developed. A network of monitoring locations on both the east and west sides of the Marsh has been selected to provide the information to be used in this evaluation.

Table II of the Agreement states that one of these sites, referred to as proposed S-21, is to be located in Chadbourne Slough at Chadbourne Road. We believe that while the monitoring location should remain in Chadbourne Slough, the proposed Chadbourne Road site is very vulnerable to known vandalism. Local club managers have stated that past structures built in this area have been quickly and thoroughly destroyed. A location that offers a greater degree of security would be in Chadbourne Slough on the west bank, approximately 150 feet above the bifurcation on the Sunrise Club. The club manager has indicated he would allow access to this area. This modification would move the S-21

David G. Houston  
Peter F. Bontadelli  
Leland C. Lehman  
Page 2

OCT 14 1988

site approximately 200 yards upstream of the proposed site at Chadbourne Road bridge. Electrical conductivity samples taken above and below the bifurcation indicate similar quality water between the two monitoring points.

Construction of the S-21 site cannot begin until permits or exemptions are granted from various agencies. In addition, Subarticle 8(a) of the Agreement also requires the construction of the Cygnus Unit, Lower Joice Unit and Annie Mason Unit by the end of the 1988 construction season. We plan to postpone the construction of the Cygnus and Lower Joice Island units until after the current duck hunting season, with all work to be completed before October 1, 1989. The landowner on Annie Mason Island has not completed the prerequisite repair work on exterior levees and, therefore, construction and installation of the pump and supply lines at that site would be premature.

Discussions among Suisun Resource Conservation District, the Department of Water Resources, and the Bureau of Reclamation have been proceeding for several months to enable the Suisun Resource Conservation District to administer construction contracts for the Lower Joice and Cygnus facilities. However, several aspects of this approach need further resolution. Due to time constraints, it will be necessary to schedule construction of these facilities after the upcoming duck hunting season. Landowners from both Lower Joice Island and Cygnus Island have consented to this postponement.

Therefore, I am requesting that the Suisun Marsh Preservation Agreement be amended as follows:

1. Modify the proposed monitoring site location for S-21 described in Table II entitled Control Stations in Article 3(b) from "Chadbourne Slough at Chadbourne Road" to "Chadbourne Slough 150 feet north of the bifurcation with Frank Horan Slough". The new location is: latitude 38° 11' 04" north; and longitude 122° 04' 56" west.
2. Substitute "1989" for "1988" on line three and line six of Subarticle 8(a) of the Agreement.

David G. Houston  
Peter F. Bontadelli  
Leland C. Lehman  
Page 3

007 1 1988

If you agree with the two recommended changes, please countersign all the copies of this letter and return them to me. When all the parties have executed the letter, we will furnish you with a conformed copy. Please feel free to contact me at (916) 445-6582, or George Barnes of our Central District office at (916) 445-1820, if you have any questions.

Sincerely,

Original Signed By  
John P. Gaffrey

David N. Kennedy  
Director

CONCUR:

Laurence F. Hancock  
Bureau of Reclamation

Date: 12-13-88

CONCUR:

Cedward O. Wallis  
Department of Fish and Game

Date: 11-18-88

CONCUR:

Leland C. Lehman, Pres.  
Suisun Resource Conservation District

Date: 11-2-88

APPROVED FOR LEGAL SUFFICIENCY:

Original signed by

Susan Weber, Chief Counsel

cc: See attached list

cc: Honorable Gordon K. Van Vleck  
Secretary for Resources  
The Resources Agency  
1416 Ninth Street, Room 1311  
Sacramento, CA 95814

Orville L. Abbott  
Executive Officer and  
Chief Engineer  
California Water Commission  
1416 Ninth Street, Room 1104-4  
Sacramento, CA 95814

bcc: Rita Singer ✓  
Randy Brown  
Ted Tsuruda  
Jerry Cox

Harlan Proctor:ik  
Text Area: HPBureau

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791

**MAR 28 1994**

Mr. Roger Patterson, Regional Director  
Mid-Pacific Region  
Bureau of Reclamation  
U. S. Department of the Interior  
2800 Cottage Way, Room W1105  
Sacramento, California 95825-1898

Mr. Boyd Gibbons, Director  
Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

Mr. George Tillotson, President  
Suisun Resource Conservation District  
2516 A Grizzly Island Road  
Suisun, California 94585

Gentlemen:

This letter is to request your concurrence with amendments to Article 7 Individual Ownership Facilities of the Suisun Marsh Preservation Agreement in accordance with Article 17 of that Agreement.

**CURRENT ARTICLE 7 LANGUAGE****7. Individual Ownership Facilities**

(a) USBR and DWR will reimburse each Individual Ownership through SRCD fifty (50) percent of the initial cost of purchasing and installing any water intake and discharge facilities, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for those water intake and discharge gates, culverts, flashboard risers, and pumps identified in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

(b) Prior to reimbursement pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later.

**PROPOSED ARTICLE 7 LANGUAGE**

**7. Individual Ownership Facilities**

(a) USBR and DWR will reimburse each Individual Ownership through SRCD ~~fifty (50)~~ seventy five (75) percent of the initial cost of purchasing and installing any water intake and discharge facilities regardless of when the facilities were approved for payment, other than those provided for in I through XI of Attachment A, necessary to enable the Individual Ownership to flood and drain its property within 30 days where such operation is necessary to achieve adequate levels of waterfowl food production as determined by DFG. It is recognized that water intake and discharge facilities on an Individual Ownership may supply water to or drain water from other Individual Ownerships. The total reimbursement obligation of USBR and DWR under this Article shall be limited to the amount specified in subarticle (c) and shall only be used for the development of engineering level Individual Ownership Water Management Plans meeting SRCD standards and those facilities ~~water intake and discharge gates, culverts, flashboard risers, and pumps identified as needed improvements~~ in the engineering level Individual Ownership Management Program developed for the property by SRCD, approved by DFG, USBR and DWR, and certified by the San Francisco Bay Conservation and Development Commission (BCDC).

Mr. Roger Patterson, Regional Director, et al

MAR 28 1994

Page Three

Payment to SRCD for the preparation of the engineering level Individual Ownership Management Plans meeting SRCD standards shall be a total of \$12,900 for the period July 1, 1992 through June 30, 1993 and a total of \$26,700 for the period July 1, 1993 through June 30, 1994.

Payment to SRCD for the period July 1, 1992 through June 30, 1993 will be made after DWR and USBR receive a progress report from SRCD detailing: 1) the results of the spot checks for elevations; 2) the new formulas developed to determine the water management facility plan for each ownership; and 3) the files detailing the computerized descriptions for each ownership.

Payment to SRCD for the period July 1, 1993 through June 30, 1994 will be made after DWR and USBR receive the following information from SRCD:

- A digitized copy of the data base.
- A digitized copy of the computer program used to establish the channel water elevations at the fill and drain sites and a digitized copy of the data files used to compute the water surface elevations and;
- A full Marsh map illustrating ownership boundaries and the location of bench marks used to establish ground elevations for the ownerships;

For each ownership:

- Ownership name, number and contact person;
- A description of the ownership's specific habitat objective, a copy of the current DFG and BCDC approved and the proposed management plan detailing required improvements;
- An ownership map illustrating the location and dimensions of channel fill and drain facilities (culverts, weir boxes, flow controllers and pumps), internal water distribution ditches, and the internal fill and drain flow patterns;
- Water surface elevations (relative to mean lower low water at the Golden Gate) for the higher high water and lower low water used in the determination of fill and drain durations;

MAR 28 1994

- Total area in acres:
- Total flooded area in acres:
- Average pond bottom elevation relative to mean lower low water at the Golden Gate or other known datum:
- Average shooting depth above average pond bottom:
- A description of ownership's revised fill and drain practices including when filling starts, how long it takes to fill, when draining starts, how long to drain to one foot below average pond bottom (if possible) and the number of leach cycles performed each year; and
- Assumptions and special considerations (if any) applied during the determination of the revised plan.

(b) Prior to reimbursement for the cost of needed improvements pursuant to subarticle (a) the Individual Ownership shall first enter into an agreement with USBR, DWR, and SRCD which shall provide that for the useful life of the facility, the Individual Ownership will either follow the "needed practices" identified in its Individual Ownership Management Program or will repay with interest the funds provided by USBR and DWR.

(c) The obligation of USBR and DWR under this Article shall not exceed \$995,000 (July 1, 1985 dollars, plus or minus such amounts, if any, as may be justified by ordinary fluctuations in construction costs, as indicated by the "Engineering News-Record's" cost indexes), shared in accordance with Article 12. USBR and DWR obligations under this Article shall terminate four years after the Montezuma Slough Control Structure Becomes Operational, or four years after the execution of this Agreement, whichever is later October 1, 1998, or the date the Western Suisun Marsh Salinity Control Project facilities becomes operational, whichever comes later.

Mr. Roger Patterson, Regional Director, et al

**MAR 28 1984**  
Page Five

If you agree with these changes, please countersign all copies of this letter and return them to me as soon as possible. When all parties have executed the letter, we will furnish you with a copy.

For further information, you may wish to contact Dwight Russell at (916) 323-8888.

Sincerely,

**(sgd) David N. Kennedy**

David N. Kennedy  
Director

CONCUR:

Lutes Smith  
U. S. Bureau of Reclamation

Date: 5/27/94

CONCUR:

A. P. Smith  
Department of Fish and Game

Date: 5/17/94

CONCUR:

[Signature]  
Suisun Resource Conservation District

Date: 4/6/94

APPROVED FOR LEGAL SUFFICIENCY:

Original signed by:

Susan N. Weber

Susan Weber, Chief Counsel

Date: MAR 16 1994

cc: (See attached list)

FORM	POLICY	DATE
Department of General Services		
APPROVED		
JUN 21 1994		
BY ORIGINAL SIGNED BY		
GARRY NESS		
Asst. Chief Counsel		

Mr. Garry Sackett  
U. S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, California 95825

Mr. Lee Lehman  
Suisun Resources Conservation District  
2516 A Grizzly Island Road  
Suisun, California 94585

Mr. Perry Herrgesell  
Department of Fish and Game  
4001 North Wilson Way  
Stockton, California 95205

Mr. Frank Wernette  
Department of Fish and Game  
4001 North Wilson Way  
Stockton, California 95205

Mr. Randall L. Brown  
Department of Water Resources  
Environmental Services Office  
3251 S Street  
Sacramento, California 95816

Mr. Harlan Proctor  
Department of Water Resources  
Environmental Services Office  
3251 S Street  
Sacramento, California 95816

Ms. Bellory Fong  
Department of Water Resources  
Environmental Services Office  
3251 S Street  
Sacramento, California 95816

✓ Mr. Dwight Russell  
Department of Water Resources  
Environmental Services Office  
3251 S Street  
Sacramento, California 95816

Ms. Rita Singer  
Department of Water Resources  
Office of the Chief Counsel  
1416 Ninth Street, Room 1118-10  
Sacramento, California 95814

**EXHIBIT B  
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. **INVOICING AND PAYMENT:** Contractor shall submit three (3) copies of the invoice to the State only after receiving **verbal** notice of satisfactory completion or acceptance of work by the DWR Contract Manager. **The State will not accept an invoice for which work has not been approved and will return the invoice as a disputed invoice to the Contractor.**

Itemized invoices may be submitted no more often than monthly, in arrears, bearing the contract number, the period covered, and a short description of the deliverables including, but not limited to, labor, equipment, materials, travel, overhead, and costs.

Submit two (2) copies of each invoice to the Contract Manager at the following address:

Department of Water Resources  
Environmental Services Office  
Attention: SMPA Contract Manager  
3251 "S" Street  
Sacramento, California 95816

Submit one (1) additional copy of each invoice simultaneously to the DWR Accounting Office at the following address in order to expedite approval and payment:

DWR Accounting Office, Contracts Payable Unit  
P. O. Box 942836  
Sacramento, California 94236-0001

Undisputed invoices shall be **approved for payment** within 45 days of the date received by the Contract Manager and/or the Accounting Office, whichever date occurs later.

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Suisun Resource Conservation District (SRCD) or to furnish any other considerations under this Agreement and SRCD shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement

with no liability occurring to the State, or offer an Agreement Amendment to SRCD to reflect the reduced amount.

The contract amount is divided between Programs (1) through (4) as shown in Table B-1 and described in Article VIII of the Revised Suisun Marsh Preservation Agreement (Exhibit A).

Table B-1. Distribution of costs by task

Program Title	Initial Program Costs <sup>1</sup>	Annual Expenditure <sup>2</sup>
Water Manager Program/Individual Ownership	\$130,600	\$234,190
Adaptive Habitat Management Plans		
Drought Response Program	—	\$80,596 <sup>3</sup>
Portable Pumps Program	\$547,757	—
Improvements to Roaring River turnouts	\$67,164	—
<b>TOTAL</b>	<b>\$745,521</b>	<b>\$314,786</b>

1. Each year in July any unexpended funds will be adjusted for inflation as described in Article VIII.F of Exhibit A.
2. Each year in July these values will be adjusted for inflation as described in Article VIII.F of Exhibit A.
3. Expenditures from the Drought Response Program are on an as needed basis as defined in Article VII.B.4 of Exhibit A.

The distribution of costs in Table B-1 may be modified without amendment based on changes in actual costs for performing work under this Agreement, as allowed by State Administrative Manual, Section 8752. The Contractor shall inform DWR in writing that the distribution of costs will differ from those listed in the attached exhibits, immediately after the Contractor determines that costs will differ. The Contractor shall provide a new written revised budget to DWR; if so requested by DWR, prior to performing work.

GTC 304

EXHIBIT C  
Applicable to SRCD

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.

b) No state funds received under this agreement will be used to assist, promote or deter union organizing.

c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.

d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

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**EXHIBIT C1**

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF  
WATER RESOURCES**

**APPLICABLE TO SRCO AS A LOCAL PUBLIC ENTITY (PAYABLES)**

**Exhibit C1**  
**Special Terms and Conditions for Department of Water Resources**  
**Applicable to SRCD as a Local Public Entity (Payables)**

1. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
2. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. EQUIPMENT RENTAL AGREEMENTS: This provision shall apply to equipment rental agreements. The State shall not be responsible for loss or damage to the rented equipment arising from causes beyond the control of the State. The State's responsibility for repairs and liability for damage or loss to such equipment is restricted to that made necessary or resulting from the negligent act or omission of the State or its officers, employees, or agents.
4. CONFLICT OF INTEREST:
  - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
    - (1) Current State Employees: (PCC §10410)
      - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
      - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
    - (2) Former State Employees: (PCC §10411)
      - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
      - (b) For the twelve-month period from the date he or she left state employment,

no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

5. PAYMENT RETENTION CLAUSE: Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 10346 and 10379 pending satisfactory completion of all services under the contract.
6. RENEWAL OF CCC: Contractor shall renew the Contractor Certification Clauses or successor documents every (3) years or as changes occur, whichever occurs sooner.
7. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage,

or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

8. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
9. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 10233, 10308.5 and 10354, the contractor must complete and return the form DWR 74, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 74 is attached to this Exhibit and made part of this contract by this reference.
10. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: [REDACTED].

**EXHIBIT D**

**GENERAL TERMS AND CONDITIONS FOR INTERAGENCY AGREEMENTS**

**APPLICABLE TO DFG AND DWR**

Exhibit D

GLA101 – General Terms and conditions for Interagency Agreements

Applicable to DFG and DWR

1. APPROVAL: This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.
2. AUDIT: The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
3. PAYMENT: Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.
4. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
5. SUBCONTRACTING: All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.
6. ADVANCE PAYMENT: The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
7. DISPUTES: The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.
8. TIMELINESS: Time is of the essence in this Agreement.

**EXHIBIT D1**

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF  
WATER RESOURCES**

**APPLICABLE TO DFG AND DWR**

**Exhibit D1**  
**Special Terms and Conditions for Department of Water Resources**  
**Applicable to DFG and DWR**

1. **COMPUTER SOFTWARE:** For contracts in which software usage is an essential element of performance under this Agreement, the Department of Fish and Game (DFG) and Department of Water Resources (DWR) certify that they have appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.
2. **SEVERABILITY:** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. **CONFLICT OF INTEREST:**
  - a. **Current and Former State Employees:** DFG and DWR should be aware of the following provisions regarding current or former state employees. If DFG or DWR have any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
    - (1) **Current State Employees:** (PCC §10410)
      - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
      - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
    - (2) **Former State Employees:** (PCC §10411)
      - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
      - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

(a) If DFG or DWR violate any provisions of above paragraphs, such action shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

(a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

DFG and DWR should also be aware of the following provisions of Government Code §1090:

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), DFG or DWR and any of their subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

**EXHIBIT E**

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF  
WATER RESOURCES**

**APPLICABLE TO THE U.S. BUREAU OF RECLAMATION**

**Exhibit E**  
**Special Terms and Conditions for Department of Water Resources**  
**Applicable to the U.S. Bureau of Reclamation**

1. **OFFICIALS NOT TO BENEFIT**: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this agreement if made with a corporation for its general benefit.
  
2. **NONDISCRIMINATION CLAUSE**: During the performance of this Agreement, U.S. Bureau of Reclamation (USBR) and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. USBR and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. USBR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.  
  
USBR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. This provision shall apply to the extent provided by federal laws, rules, and regulations.
  
3. **INDEPENDENT CONTRACTOR**: The USBR, and its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
  
4. **SEVERABILITY**: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
  
5. **TIMELINESS**: Time is of the essence in this Agreement.
  
6. **SOFTWARE COPYRIGHT**: For contracts in which software usage is an essential element of performance under this Agreement, the USBR certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.

**EXHIBIT F**

**DEPARTMENT OF WATER RESOURCES STANDARD  
CONTRACT PROVISIONS REGARDING POLITICAL REFORM  
ACT COMPLIANCE**

**APPLICABLE TO DFG AND SRCD**

California Department of Water Resources

**Standard Contract Provisions Regarding  
Political Reform Act Compliance**

1. POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code §82048 and Title 2, California Code of Regulations §18701. Accordingly, as specified by DWR, such persons shall complete and submit to the DWR Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement, updated both annually and when changes in key staff or duties occur. The financial interests disclosed shall be for Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at [www.fppc.ca.gov](http://www.fppc.ca.gov). Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC). A leaving office statement must also be filed upon completion of all contract assignments.
- b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code §87100. Contractor shall notify DWR immediately of any potentially disqualifying conflict of interest. Government Code §87100 provides:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
- (1) Failure to complete and submit all required Form 700s within the 30-day period as required in paragraph A above, or respond to any

request from the DWR Personnel Officer for additional information regarding any such Form 700s;

- (2) Failure to notify DWR of a potentially disqualifying conflict of interest;
- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code §87100 provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.